

## **Committee on Development and Intellectual Property (CDIP)**

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### **SCENARIOS AND POSSIBLE OPTIONS CONCERNING RECOMMENDATIONS 1C, 1F AND 2A OF THE SCOPING STUDY ON COPYRIGHT AND RELATED RIGHTS AND THE PUBLIC DOMAIN**

*prepared by the Secretariat*

1. The annex to this document contains a revised version of the document CDIP/9/INF/2, entitled “Scenarios and Possible Options Concerning Recommendations 1c, 1f and 2a of the Scoping Study on Copyright and Related Rights and the Public Domain”, which contains information clarifying the scope and possible implications of the implementation of recommendations 1c, 1f and 2a of the Study on Copyright and the Public Domain (document CDIP/7/INF/2) as requested by Member States during the Ninth Session of the Committee.

2. *The CDIP is invited to take note of the information contained in the Annex to this document.*

[Annex follows]

During the Third Session of the Committee on Development and Intellectual Property (CDIP) in 2009, a thematic project on IP and the Public Domain (CDIP/4/3/Rev.) was approved, which contained components on patents, trademarks, traditional knowledge and copyright for implementation in the 2010/11 Biennium. The thematic project dealing with Recommendations 16 and 20 of the Development Agenda included a Scoping Study on Copyright and Related Rights and the Public Domain (the Study), which was prepared by Mrs. Séverine Dusollier, Professor at the University of Namur. During the sixth session of the CDIP held in November 2010, the author presented her work and responded to a number of questions put forward by Member States. In that context, Member States requested the Secretariat to publish the Study as an official document of the eighth session of the CDIP, which was held from November 14 to 18, 2011.

The Study has the objective of providing assistance to Member States by raising awareness of the increasing importance of the public domain. Moreover, the Study provides information for the evaluation of the possible benefits of a rich and accessible public domain. Finally, the author formulates a number of recommendations in regard to future activities on the public domain that might be carried out by WIPO, particularly in three areas. The first area relates to the identification of the public domain, for example the mutual recognition of the status of orphaned works. The second one presents activities in the area of the availability and sustainability of the public domain, for instance in the development of registration systems, including the interconnection of national databases. The third one focuses on the field of non-exclusivity and non-rivalry of the public domain.

During the eighth session of the CDIP, Member States agreed that the Secretariat would prepare an information document clarifying the scope and possible implications of the implementation of recommendations 1(c), 1(f) (both belonging to the area on identification of the public domain), and 2a (relating to the theme of availability and sustainability of the public domain) for discussion at the ninth session. The document would also describe possible steps and options for the implementation of the three recommendations mentioned with the understanding that the remaining recommendations would remain open for further discussion.

#### A. Analysis for Recommendation 1c

1c: *“The voluntary relinquishment of copyright in works and dedication to the public domain should be recognized as a legitimate exercise of authorship and copyright exclusivity, to the extent permitted by national laws (possibly excluding any abandonment of moral rights) and upon the condition of a formally expressed, informed and free consent of the author. Further research could certainly be carried out on that point”.*

One of the elements composing the taxonomy of the public domain, as presented in the Study, is the “voluntary public domain”, which contains works for which copyright protection has been abandoned by their owners.

In fact, several scholars, associations and institutions are proposing the creation of a legal framework for copyright relinquishment, and highlighting the advantages of such relinquishment for access to knowledge and the public domain. For instance, Creative Commons, a non-profit, U.S.-based organization offering free permissive copyright licenses to authors, has created a CC0 license (“no rights reserved”), where the author dedicates a work to the public domain by waiving all his/her copyright and related rights. Through the use of this CC0 public domain

waiver, the British Library had released by November 2010 three million records from the British National Bibliography<sup>1</sup>. The Communia Project<sup>2</sup> created a network of organizations that became a point of reference for high-level policy discussion and strategic action on all issues related to the public domain in the digital environment. The network fostered and facilitated a comprehensive discussion about copyright in the digital environment, focusing on how to maximize the economic, social and cultural impact of our cultural and scientific heritage. Among its final policy recommendations, the Communia Network suggests that in order to prevent unwanted protection of works of authorship, full copyright protection should only be granted to works that have been registered by their authors (non-registered works should only get moral rights protection)<sup>3</sup>: the relinquishment of economic rights would therefore be the default principle, unless the author has proceeded to the registration of his or her work.

Moreover, there is a large and growing body of international, interdisciplinary literature on the “commons”. Scholars such as Professor Elinor Ostrom<sup>4</sup> (2009 economy Nobel prize winner for her analysis of economic governance study of common pool resources), look at knowledge from the perspective of “the commons paradigm”, i.e. resources that can be shared freely by a group of people.

However, several questions and issues arise from the relinquishment of copyright, including in regard to the nature of copyright itself. If copyright is considered as a fundamental right, it is essential to determine whether it would be legal to abandon such right. However, if it is deemed to be a mere property right, the matter would be less complicated as it is possible in most legislation to renounce property itself.

Different and more complex juridical problems may arise in those Member States where copyright legislation openly grants unwaivable economic rights. Among the earliest examples of this kind of rights was Article 5 “Unwaivable right to equitable remuneration” of the European Directive 2006/115/EC<sup>5</sup>, which replaced Directive 92/100/EEC, also known as the Rental and Lending Rights Directive. Arguably a full relinquishment of copyright would not appear compatible with such provisions. In addition, the inalienability of moral rights can also be an issue. Attached to the person of the creator, the protection of moral rights is deemed inalienable in many countries. This might contradict the will of the author to abandon his/her copyright. Finally, the irrevocable nature of relinquishment is important to consider, i.e. to determine whether the author should be able to change his/her mind and choose to exercise his/her exclusive right on the work again.

A basis for further discussion could be identified in analyzing further the legislation of countries which include the possibility for such renunciation in their definition of the public domain, such as the Republic of Korea. According to the Study of Mrs. Dusollier, “*The Republic of Korea admits that authors can donate their rights to the Minister of Culture and Tourism which will then entrust the Korea Copyright Commission with managing the copyright in these works, but not for profit-making purposes*”. Furthermore, the possibility of establishing a precise regime of formal requirements should be explored with a view to avoiding abuse of the often weak position of the creator. This regime should guarantee the free will of the author. For instance, one should not underestimate the financial or social situation that could influence the author’s decision to renounce copyright. Finally, it is important to reflect, from a public policy viewpoint, whether it would be appropriate, and under which circumstances, to promote a legal regime for relinquishment, in particular from the viewpoint of both users and right owners. .

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<sup>1</sup> [http://wiki.creativecommons.org/Case\\_Studies/British\\_Library](http://wiki.creativecommons.org/Case_Studies/British_Library)

<sup>2</sup> <http://comunia-project.eu/>

<sup>3</sup> <http://www.comunia-association.org/recommendations-2/>

<sup>4</sup> <http://www.scribd.com/doc/27333114/Understanding-Knowledge-as-a-Commons-Theory-to-Practice-2007>

<sup>5</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:376:0028:0035:EN:PDF>

On this basis, WIPO suggests commissioning a study on copyright relinquishment. The study should focus on the interest of the public at large, including users, in accessing creative material and also on the interest of authors, in particular on the need to make them aware of the implications of copyright relinquishment. Questions like the need to secure the content, the need for formalities for relinquishing copyright, and the possibility for the author to change his/her mind should also be addressed. The study would consist of a comparative analysis of a number of national jurisdictions on this issue to be selected with a geographically balanced approach. The study would have a descriptive and not a prescriptive nature. No specific regime would be promoted. The study would merely showcase different approaches implemented in the Member States under consideration. The study would also outline trends and common features identified, and would outline possible future activities to be undertaken by WIPO and Member States in this area.

## B. Analysis and suggestions for Recommendation 1f

1f: *“International endeavours should be devoted to developing technical or informational tools to identify the contents of the public domain, particularly as far as the duration of copyright is concerned. Such tools can be data collections on works, databases of public domain works, or public domain calculators. International cross-operation and cross-referencing of such tools is of particular importance”.*

Access, use, identification and location of public domain materials involve the development of technical and informational tools. As copyright is granted with no formalities, in conformity with the requirement of Article 5.2 of the Berne Convention, there is generally no central agency or registry where all data about works is collected. According to the Survey on Voluntary Registration and Deposit systems under copyright carried out by WIPO, in cooperation with its Member States in 2010<sup>6</sup>, the majority of copyright registering bodies are not connected to other copyright data systems provided either by public or private entities. The problem lies therefore in the disparity of data, and focus should be given to the availability of information on both copyright content and the public domain. Several projects have emerged from different bodies attempting to develop converging and interconnected sources of information, with the help of various technical tools.

Libraries and other cultural heritage institutions have rich repositories of works and databases listing important information such as the name of the author, publication details, etc. Rights management information, such as that found in content identifiers like the International Standard Book Number (ISBN), play a key role in facilitating availability of information about works and creators. The databases of cultural heritage institutions are often a precious source of information. Their development into digital libraries (for example the Europeana Digital Library<sup>7</sup> and the World Digital Library developed by UNESCO<sup>8</sup>) needs to take into account the public domain nature of part of their collections and the fact that they often also hold protected material. Other private and public institutions, such as collecting societies, publishers, producers and copyright registries also hold valuable information about creations, both protected and in the public domain.

As part of the Development Agenda thematic project on IP and the Public Domain a Survey of Private Copyright Documentation Systems and Practices was prepared by WIPO with two parts, one focused on private registries and the other on [Collective](#) Management Organizations (the latter partly pending). While the two parts contain relevant information in regard to

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<sup>6</sup> [http://www.wipo.int/copyright/en/registration/registration\\_and\\_deposit\\_system\\_03\\_10.html](http://www.wipo.int/copyright/en/registration/registration_and_deposit_system_03_10.html)

<sup>7</sup> <http://www.europeana.eu/portal/>

<sup>8</sup> <http://www.wdl.org/en/>

recommendation 1f, the former can be considered, in the words of its authors, a *companion paper* to the Study by Professor Dusollier and specifically so in regard to the issue dealt with in the recommendation under consideration. The [Survey of Private Copyright Documentation Systems and Practices](#), prepared by a team of researchers from different countries and institutions, led by Professor Ricolfi, contains a comprehensive overview of private registries and databases, private documentation and public domain calculators, including detailed information on the existing technologies, rights management information and standards. Annex I of the Survey provides a *vademecum* of Private Copyright Registries and Documentation Systems, enabling easy reference to concrete examples of some of the most innovative and widespread initiatives.

As described in the Survey, *“using a wide array of technological tools, private registries systematically collect such data and other relevant information to offer guarantees related to the time of registration, the characteristics of the registered works and the identity of the registrant (with a higher or lower degree of trust). Most registries make this information (or at least a subset of it) available to the public”*.

Copyright documentation, including in the form of rights management information, provides relevant data for the prospective users of creative content. For instance, Creative Commons (CC), allows creators to mark their works with a range of permissions before making them publicly available, and plays a key role in facilitating identification of content on line. By providing information on the creators and licensing conditions of vast amounts of creative content distributed online, CC facilitates indirectly the delimitation of the public domain.

As described in the Survey of Private Copyright Documentation Systems and Practices, *“public domain calculators are pieces of software (usually offered as an online service) which can automatically evaluate the copyright status of a given work in a given jurisdiction. The calculators are normally based on an interactive procedure where users are asked various questions, such as the type of work (e.g., “is the work a photographic work?”), the date of publication, and the year of death of the author. Accordingly, even if public domain calculators can help to eliminate the necessity to consult a copyright lawyer, they still need various kinds of user inputs and clearly need to be used in complement with other copyright documentation systems. In essence, public domain calculators are “copyright computation systems” which would be essentially useless in the absence of the appropriate copyright information. Public domain calculators are normally developed by non-profit organizations or academic institutions.”* The Survey provides several examples of copyright-term calculators such as the one provided by the website Public Domain Sherpa, largely used in the US. The Europeana Connect European project launched a website<sup>9</sup> including a public domain calculator which can offer results for various European countries.

Private registries, databases of different types, private documentation systems and public domain calculators represent strategic resources in the orphan work context, since they can be especially important to potential users in conducting diligent searches on the copyright status of a work. There are therefore many initiatives and tools which are being developed across the world to enable better access to, use, identification and location of the public domain. However, these tools and initiatives need to be coordinated and there is an increasing demand for linking and connecting them. WIPO has already taken one step towards the connection of public registries, by means of creating a list<sup>10</sup> of contact details for all Registration and Deposit Systems in the context of the WIPO Survey of Public Registries mentioned above. The Annex to the WIPO Survey on Copyright Documentation and Practices – Private Registries also contains a list of different private platforms. However, further steps could be taken. On this

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<sup>9</sup> <http://outofcopyright.eu/>

<sup>10</sup> [http://www.wipo.int/export/sites/www/copyright/en/registration/replies/pdf/copyright\\_registration\\_offices.pdf](http://www.wipo.int/export/sites/www/copyright/en/registration/replies/pdf/copyright_registration_offices.pdf)

basis, WIPO suggests the following scenarios to move forward with this recommendation, at the national, regional and international levels.

1. *Steps to take at national/regional level*

(a) Copyright offices of each region could work together in closer cooperation and examine ways to make information available to each other, which would make the delimitation of the public domain at an international level easier:

In the context of the WIPO Sub-Regional Meeting on Copyright and Related Rights for Latin American Countries which met on December 12 and 13, 2011, in Peru, the Latin-American copyright offices agreed to work together towards preparing a compilation of applicable law on copyright duration in the region and to ensure its on-line accessibility by Latin American offices. This would involve facilitating information about their respective legal frameworks, modifications to existing rules and their effect in the formula to determine duration of rights. At the same time, this would also provide a more expeditious diffusion of works that have already fallen into the public domain at regional level. There are also a few recent legislative developments. The Brazilian government is preparing a bill for the revision of the Brazilian copyright law. The bill contains a proposal for the establishment of a unified digital registry system of works and phonograms. This registry has been conceived as an instrument for collection of information and data for commercial use by the cultural industries. Simultaneously, the digital registry would constitute an efficient tool in the identification of works that have fallen in the public domain.

(b) Public registries need to be rendered more dynamic and to be modernized:

In the context of the above-mentioned meeting, the Latin-American copyright offices recognized the importance of functional copyright infrastructure. Accordingly, they recommended that modernization and automation of administrative infrastructure and support systems for copyright offices, voluntary registries and collective management societies should be given priority within WIPO's copyright technical assistance and cooperation strategies. Cooperation in this regard may include benchmarking of existing systems and gap analysis, needs assessment and assistance in preparing automation strategic plans (deployment, implementation and sustainability of these systems), upgrading of IT infrastructure, training of local IT staff and digitalization of local content. The Latin American offices anticipate that the implementation of these types of activities would contribute to the strengthening of the copyright offices in the region, as well as the establishment of a network of IT experts.

Some commentators suggest that registries could be modernized in the sense that any change affecting the copyright status of a work would be reflected in their databases, particularly if such change represents a defining factor for determining the public domain nature of a work. This could be achieved by encouraging the interconnection between the databases of public registries and those of civil registries holding information on the date of the authors' death. Thus, public registries could play an even greater role in the determination of the copyright status of a work, and in a broader sense in the delimitation of the public domain.

Member States could also develop online search facilities at national level. For instance, according to the WIPO Survey mentioned above, only 46% of the responding countries have search facilities, and 84% have no online public search facility (Chile, Korea and the US being the only ones providing such a tool). Member States could therefore provide technical tools to

Copyright Offices to offer search facilities, such as what is already done by the US Copyright Office<sup>11</sup>. The result of these online searches could be accompanied by a disclaimer of liability.

Finally, WIPO is providing tools to enhance the copyright infrastructure which can facilitate the identification of the public domain. For instance, WIPO has facilitated the automation of voluntary registration systems with a software developed specifically for this purpose: the *Gestion de Derecho de Autor* (GDA). This software is used in many developing countries, including many in Latin America and has recently experienced a significant enhancement to adapt to the evolving requirements in the digital environment.

(c) The interconnection of private registries among themselves, and also with public registries, should be further examined.

Private registries hold substantial information on creative works<sup>12</sup>. However, the majority of copyright registering bodies are not connected to other copyright data systems provided either by public or private entities.

For instance, in the context of the WIPO Sub-Regional Meeting on Copyright and Related Rights for Latin American Countries, Latin-American copyright offices agreed on the importance of improving information management, particularly in addressing portability and interoperability of various information management systems (public-private), including the need to define and adopt norms and standards that would facilitate a continuous flow of information exchange between public registers, as well as between collective management data repertoires in the region. For this reason, copyright offices agreed to promote cooperation in the development of information management systems that operate in neutral technological platforms, with a view to ensuring compatibility of media files, operative systems, and telecommunications.

In parallel, WIPO's Development Agenda Project for the Constitution of a Common Database for West African Network (WAN) aims at developing several interlinked repertoire databases that are designed to interact with the existing international databases established by collective management organizations throughout the world, so that collecting societies can manage their rights through a common network. Finally, the WIPO Software for Collective Management of Copyright and Related Rights (WIPOCOS) is a software application developed and supported by WIPO in a number of developing countries, across Africa and Asia.<sup>13</sup> WIPOCOS consists of several interlinked databases that are designed to interact with the existing international databases established by collective management organizations throughout the world. A project to re-engineer WIPOCOS for Web applications and for use in cloud-computing is being developed and undertaken.

(d) Member States could promote the development of public domain calculators.

Public domain calculators would be developed in conformity with the duration of copyright in respective national jurisdictions. Due to the complexity of the copyright regulations, some commentators consider these tools prone to a certain degree of inaccuracy. To address

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<sup>11</sup> [http://www.copyright.gov/forms/search\\_estimate.html](http://www.copyright.gov/forms/search_estimate.html)

<sup>12</sup> According to the WIPO Survey of Private Copyright Documentation Systems and Practices (p. 1) "*Private copyright registration and documentation systems around the world arguably constitute the largest pool of information concerning copyright and related rights. Undoubtedly, these same systems provide the greatest online free access of the same pool of information.*"

<sup>13</sup> The long-term users of WIPOCOS are Benin, Burkina Faso, Kenya, Malawi, Niger, Tanzania, Togo, Zambia, and Zimbabwe. This software was also installed in South Africa, Ethiopia, Ghana, Mozambique, Kenya, Nigeria, Zanzibar, Rwanda, Burundi, Cameroon, Chad, Cote d'Ivoire, Guinea, Madagascar, and Mali. Its use is now extending to Arab countries and Asia, with installation planned in Bangladesh, Bhutan, Malaysia, Indonesia, Vietnam, Philippines, Cambodia, Laos, Nepal, Morocco and Tunisia.



concerns about the calculators not being completely reliable and authoritative, the use of appropriate disclaimers could be taken into consideration.

## 2. *Possible steps at international level*

The development of online search facilities and interconnection of public/private registries at the national/regional level could help at a second stage to interconnect registries at the international level and to support digital search tools, leading to improvement in the availability of information on public domain materials worldwide.

Some Member States have already proposed the creation of an international network of information on the works protected by copyright law, through the interconnection of databases relating to public registries of works. Such an initiative has been proposed by the Italian Ministry for Cultural Heritage and Activities, with a view to creating a System of Public Registers of Copyrighted Works (SiROI) and promoting cooperation among Member States to share information concerning copyrighted works that are registered in the national public registers. A draft proposal has already been submitted by the Italian authorities to copyright authorities of India, Kenya, Mexico and Spain, and it received favorable responses. According to the Italian authorities, this proposal will soon be submitted to other countries. The Italian proposal also suggests that Member States, in cooperation with WIPO, could help generalize this initiative by developing an international Protocol on the issue.

Indeed, if Member States develop the above-mentioned initiatives at a national and regional level, an international platform providing search tools in different registries around the world could subsequently be developed at international level. This platform could serve to search both copyright content and public domain materials. The platform could also serve as a point of connection between the different databases holding significant amounts of information. This platform would provide useful information made available to guide users on the steps to take to find whether a work is in the public domain, and to connect them to the appropriate source of information. Networking of tools and sources of information could also play a role in the orphan works context, by providing a means to undertake a diligent search for creative content and thus assist in differentiating works that truly belong in the public domain and those that are under copyright protection..

## C. Analysis for Recommendation 2a

2a: *“The availability of the public domain should be enhanced, notably through cooperation with cultural heritage institutions and UNESCO (through its work on the preservation of intangible cultural heritage)”.*

The importance of the public domain in terms of the public interest is manifold and can be assessed from educational, democratic, and economic perspectives. It can also be considered as a central element of the cultural heritage of humanity. This is demonstrated by the intensive work that UNESCO carried out in the 1990's around the notion of safeguarding the public domain, which was deemed to be part of the common heritage of mankind, and as such, worthy of specific measures aiming at guaranteeing both its authenticity and integrity.



Member States can help enhance the availability of the public domain by:

(a) Encouraging national cultural heritage institutions (CHI) to provide more visibility to the collections they safeguard, and not just focusing on retention and preservation of national cultural heritage, bearing in mind the rights and interests of the traditional holders of such cultural material:

As suggested in the “WIPO Guide on Managing Intellectual Property for Museums “ by Mrs. Rina Elster Pantalony<sup>14</sup>, visibility could be achieved by identifying appropriate management practices for CHIs and establishing the means to sustain cultural heritage programming. For instance, she suggests that CHIs could “engage in commercial opportunities, so long as their missions and mandates are not seriously compromised”. CHIs could also adopt licensing strategies for works that are still under copyright protection. The revenue streams could then help provide more visibility to the public domain material which they hold, by the means of digitization for instance. WIPO is in the process of updating this guide and could request the author to provide more information on this aspect.

Another means to provide more visibility to the collections of CHIs would be for them to explore the full potential of cooperation with international organizations, in particular UNESCO. UNESCO adopted on October 17, 2003, a Convention for the Safeguarding of Intangible Cultural Heritage. One of the main objectives of the Convention is to “ensure respect for the intangible cultural heritage of the communities, groups and individuals concerned” and to “raise awareness at the local, national and international levels of the importance of the intangible cultural heritage”. One hundred forty-two (142) State Parties have already ratified the Convention, and periodic reports are established in order to assess the measures taken by the states and national institutions to safeguard intangible heritage. In addition, an Intergovernmental Committee for the Safeguarding of the Intangible Cultural Heritage has been established within UNESCO. One of its main objectives is to “provide guidance on best practices and make recommendations” to the State Parties, and also to provide international assistance such as the training of all necessary staff, or the elaboration of standard-setting measures, supply of equipment and know-how. Member States could therefore encourage cultural heritage institutions to fully use the international tools and endeavors which are made available to them, in particular with the UNESCO Committee for the Safeguarding of the Intangible Cultural Heritage. This cooperation could help improve the exchange of information and experiences in areas such as inventories of intangible cultural heritage.

(b) Considering digitization of cultural heritage as one of the most important means towards the accessibility of intangible cultural heritage:

The US Copyright Office is currently running a digitization and indexing project to make historical copyright records searchable and available online. In addition, the Google Books project has shown that private entities have a growing interest in participating in digitization. A research paper was commissioned by the European Commission and delivered by the “*Comité des Sages*” on the digitization of the cultural heritage of Europe. In this report<sup>15</sup>, two possible solutions were suggested to create an incentive for digitization: the financial resources could either come from public investment (and then users would be charged for the use of the digitized materials), or public/private partnerships could be envisaged, with corporations such as Google. According to some commentators, this solution would create the risk of offering a monopoly on the public domain. Member States should reflect on the challenges and opportunities involved in an eventual collaboration with private and/or public entities to help digitize their cultural heritage.

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<sup>14</sup> [http://www.wipo.int/copyright/en/museums\\_ip/guide.html](http://www.wipo.int/copyright/en/museums_ip/guide.html)

<sup>15</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006H0585:EN:NOT>

(c) Looking at different legislative options to enhance the preservation and accessibility of the public domain:

The *Domaine Public Payant* is a system by which a user of materials in the public domain is required to pay a compulsory license fee in order to reproduce or publicly communicate the work, despite its status in the public domain. According to the Study of Professor Dusollier, in some states like Algeria, this remuneration is dedicated to the preservation of the public domain itself and not distributed to individual creators. The idea of the *domaine public payant* can be envisaged as a way to fund the preservation of public domain works by sharing the burden of financing the public availability of public domain works, namely by digital libraries, with the commercial exploiters thereof. It could therefore enhance the preservation and availability of the public domain, particularly in providing incentives to digitize public domain material. Nowadays, according to the Study, a regime of *domaine public payant* exists in several countries such as Kenya, Senegal and Paraguay.

Member States could also consider legislative options regarding moral rights in order to provide the possibility for public authorities to defend the integrity of works that are considered as cultural heritage. According to Professor Dusollier, this would allow “*the State or its representatives, generally the Minister of Culture, to exercise the moral right to defend the integrity of public domain works*”. The situation is two-fold. According to the Study, in some Member States (such as Australia, the Republic of Korea or Malaysia), the duration of moral rights of integrity follows that of the economic rights. In other words, when the work falls in the public domain, there is no moral right protecting its integrity. In this situation, Member States could enact a law granting the state a perpetual moral right, which would allow public authorities to ensure a balance between safeguarding cultural heritage and the public interest in the access to culture. This protection of the cultural heritage could therefore be a tool to safeguard and preserve the domain public “*under the guise of the moral right*” and should occur “*only when a key public interest or serious harm to the work is at stake*”.

In other Member States, however, the rules of perpetuity apply to moral rights such as integrity and paternity, and even to the right of divulgation, and they are granted to the heirs of the author. At first glance, it seems that the primary effect of such perpetual moral rights would be to reduce the free availability of public domain works (for example when the heirs wish to prevent the making available of posthumous and unpublished works or to forbid any adaptation of the work). In this situation, Member States could therefore enact a special provision where the public interest could prevail to facilitate access to public domain materials, by granting the competence to public authorities to safeguard the public heritage. This is, according to Professor Dusollier, a provision existing “*in Brazil (obligation to defend the integrity and authorship of public domain works imposed on the State), in Costa Rica (Minister of Culture and Youth), in Italy (the Minister of Culture in case of public interest)*”. It is also the case in France where the legislator has granted, under special circumstances and specific conditions, the Ministry of Culture the right to force the heirs to abandon their refusal to divulge the work if there is a public interest at stake.

(d) Raising the awareness of Member States and of the public about the importance of the availability of the public domain is also a priority:

WIPO will be providing inputs on intellectual property questions and actively participate in the UNESCO International Conference on *Memory of the World in the Digital Age: Digitization and Preservation*, taking place in September 2012 in Vancouver. This will help to reach a broader public, made up of representatives of governments, national and international public institutions, academics and other stakeholders, and to address the increasing importance of the availability

of public domain. WIPO has already contacted UNESCO in order to enhance a further cooperation between the two organizations. UNESCO has responded favorably and has introduced to WIPO the officials in charge of Intangible Cultural Heritage and Digitization in order to enhance the cooperation of the two organizations on these important issues.

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