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Concerns regarding resource allocation to the EUIPO Out of Commerce Works portal

Dear Mr. Negrão,

We are writing to you to express our concerns about the current state of resources allocated by the European Union Intellectual Property Office (EUIPO) to the out of commerce works portal. The signatories are concerned that insufficient maintenance, development, and improvement of services related to the out of commerce works portal may block, for the foreseeable future, the use of the solution designed by the Copyright in the Digital Single Market Directive.

Our working group recognizes that the success of the out of commerce works provisions system relies heavily upon the work undertaken by the EUIPO. The EUIPO is responsible for enabling the declaration of copyright-protected works from cultural heritage institutions that are no longer in commerce, so that rights holders have the opportunity to opt-out. Out of commerce works cannot be shared unless this declaration is made. The out of commerce works portal is thus integral to facilitating access to and promoting the reuse of these cultural materials.

However, various cultural heritage institutions are facing challenges in declaring works to the portal and therefore in making use of the new out of commerce works system. A major cause is the insufficient resources that the EUIPO spends on the development and maintenance of the portal, which cannot process more than a limited number of records.

At the moment, cultural heritage organisations are asked by EUIPO staff to inform them about future contributions, to schedule new contributions to the portal and to limit their contributions to a couple of thousands per week. For example, a large dataset of works failed

to be ingested into the portal requiring the contributing cultural heritage institution to distribute the data across multiple documents, which substantially increased the workload and time spent to declare the materials. Moreover, this lengthy process was complicated by outages in a case when, simultaneously, another institution was uploading records to the portal.

These in-between solutions do not offer a sustainable approach in view of the (probable) exponential increase of out of commerce works that will be declared. We are aware that multiple cultural heritage institutions are preparing contributions of hundreds of thousands of works and fear that they will be deterred by the lack of capacity of the portal or missing API.

While previously stakeholders heard about the opportunity of implementing solutions (e.g. APIs) to facilitate data exchange and make data flows between memory institutions and EUIPO systems much smoother, we seem to be facing obstacles, even threatening the maintenance of the current and foreseen processes.

Likewise, rights holders should be able to easily identify works including possible in-commerce works which could have been incorrectly labelled. Being able to use books-in-print databases, when they exist, through the use of an API to exclude such works, would facilitate the work of these rights holders.

Various institutions have faced problems with regards to the crucial login and opt-out functionalities of the portal. An increase of opt-outs should also be expected as cultural heritage institutions continue declaring works, and start making them available online.

In view of the five-year planning efforts currently underway at the EUIPO, we urge the organisation to allocate the necessary resources to maintain, develop, enhance and ensure the continued success and improvement of the out of commerce works portal above all through a stable and reliable data interface (API) to facilitate automated input and output workflows.

We appreciate your commitment to the cultural heritage sector and the creative and cultural sectors, and look forward to a continued dialogue on how we can collaboratively ensure an efficient functioning of the out of commerce works portal. We remain at your disposal for any further discussions or clarifications.

Yours sincerely,

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COMMUNIA Association for the Public Domain



International Federation of Library Associations and Institutions



Knowledge Rights 21



KVAN, Association for the Archive Sector in the Netherlands