

Orphan Works, Rights Clearance Context

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8. ARCHIVDAG

VUN DE LËTZEBUERGER ARCHIVISTEN

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Some rights projects at the National Library

- Europeana Licensing Framework, 2012
- Outofcopyright.eu, 2014
- Copyrightexceptions.eu, 2016
- Rightsstatements.org, 2016
- Diligentsearch.eu, 2018
- Internal clearance process BnL, 2018

Related work of Consortium dept.

- Digital libraries for 17 organisations
 - Licensed access for science, education and public
 - Uni.lu, BnL, LIST, LIH, ebooks.lu, Min. Fonction Publique, Max-Planck Lux, ...
- Open Access – Transition and monitoring
 - Lux. research organisations, FNR, Max Planck München, Couperin, Library startups, ...

www.consortium.lu/about



**THE ORPHAN WORKS DISASTER,
A SAD STORY AT THE END OF THE DAY**



**THE ORPHAN WORKS DIRECTIVE,
A GREAT, BUT VERY SMALL, FIRST STEP
TOWARDS A BRIGHT FUTURE**



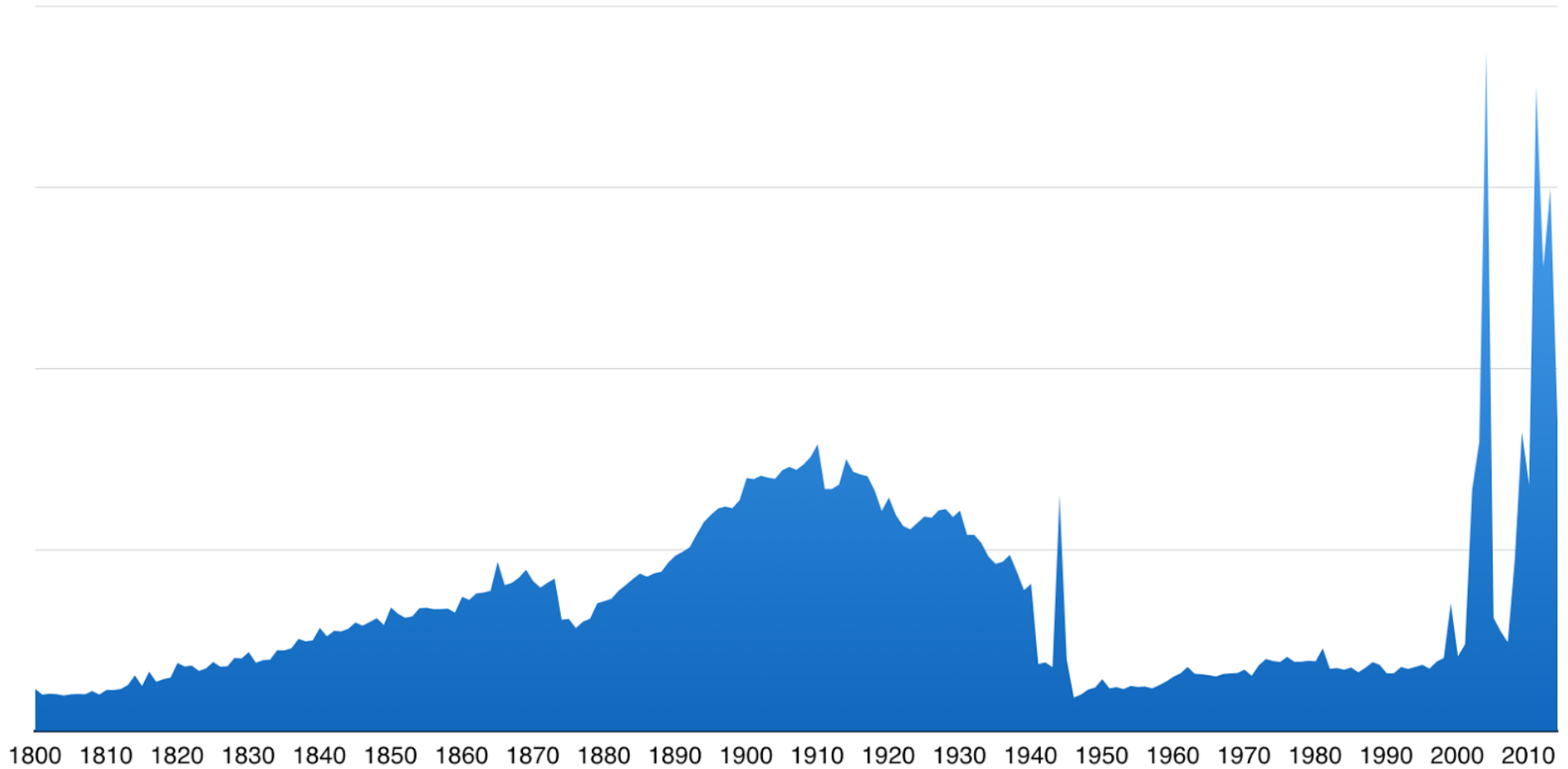
Definition - Orphan Works

- Works for which authors or rightsholders cannot be identified or located.
- Impossible to get permission for reproduction and making available online.
- Works remain unused, abandoned, locked, ...

Difficult problem

- Massive increase in number of works in 20th Century
- No formalities for protection -> no registries
- Long protection duration (70 yrs post mortem)
 - ➔ A large, but unknown, number of works are orphan.

20th Century Black Hole



Source: Europeana, 2015, CC BY-SA

<https://pro.europeana.eu/post/the-missing-decades-the-20th-century-black-hole-in-europeana>

GREAT EXPECTATIONS



Directive 2012/28/EU

« ... fait partie des actions clés de la stratégie numérique pour l'Europe.

Les projets de numérisation à grande échelle ont jeté une lumière nouvelle sur les œuvres dites orphelines.»

Source: Projet de Loi 6783, Exposé des motifs

REALITY



Diligentsearch.eu final conference, May 2018

Regardless of all the effort and some positive points, there is basic agreement that:

“Directive (...) is unsuitable for its intended purpose.”

Positive aspects

- A new exception to exclusive copyrights has been created, mandatory in all Member States.
- The first substantive change in copyright law since 2001 InfoSoc Directive.

Failures to learn from

- Trying to solve the “Orphan problem” is the wrong framework, wrong questions were asked.
- Ideological copyright battle of early 2000s between rightsholders, cultural heritage organisations and new intermediaries (remember Google Books?)
- Diligent search requirements are impractical to impossible.
- Non-profit Commons organisations like Wikipedia are not among beneficiaries of Directive.
- Standalone photographs (postcards) and amateur A/V (Super 8, Video Tapes) are NOT covered.

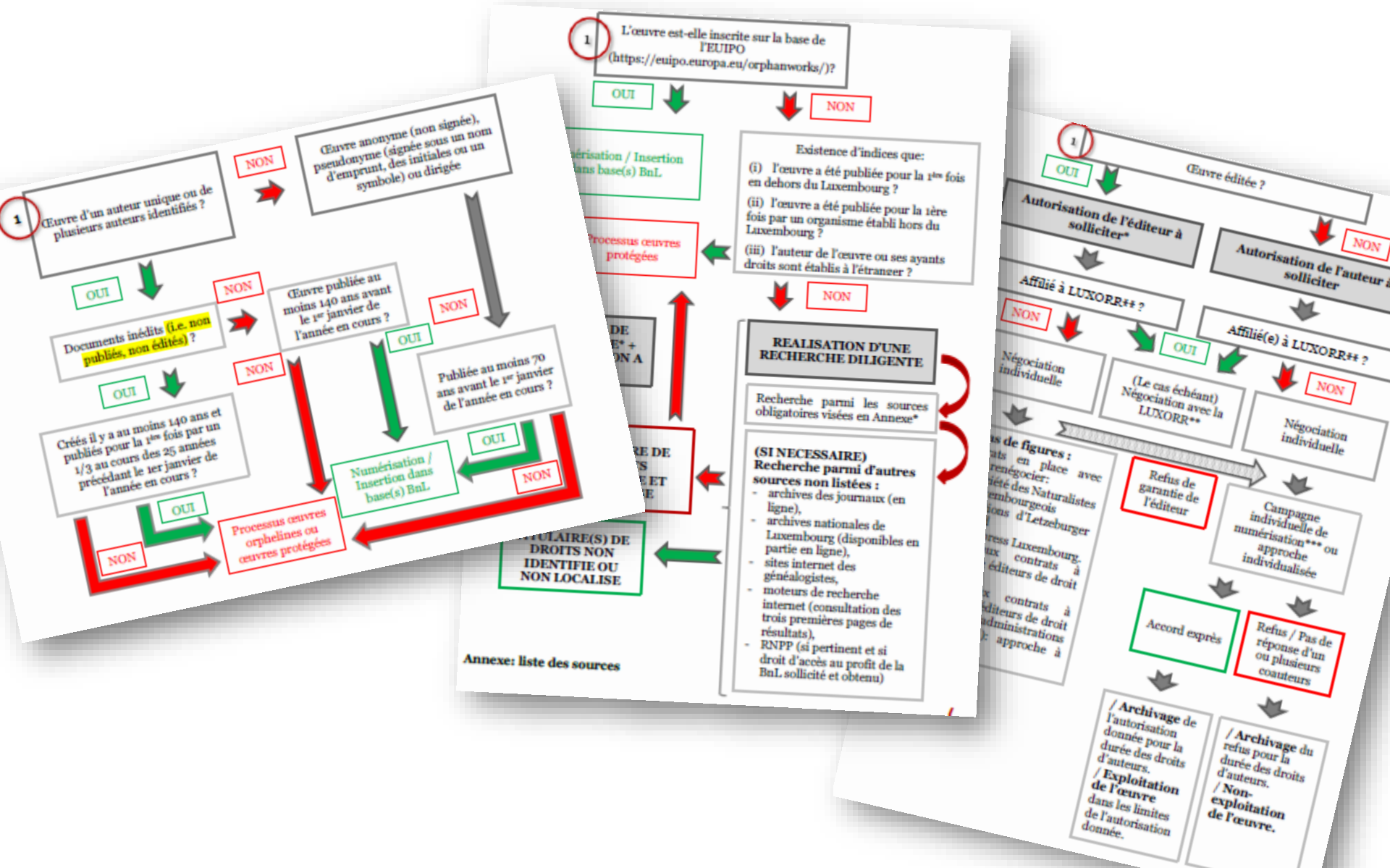
**ORPHAN WORKS IN THE
NATIONAL LIBRARY'S CLEARANCE
PROCESS**



Example: Newspaper Mass Digitisation

- Challenge: Determine the complete contractual lifecycle of a work since its creation, including author's death, divorces, heirs (up to 3 generations) plus publisher status, incl. bankruptcies and business failures plus third parties such as press agencies, advertising agencies, etc.
- ... for each article, illustration and photograph

Clearance process



Is it Public Domain?

Cut-off date rule

- Not orphan but Public Domain if published >140 years ago.

Country of 1st publication

- Diligent search must follow the national rules of the country of 1st publication
- Articles and photographs:
 - In the last 140 years, were they always published first in Luxembourgish newspapers?
 - Press agency articles and photographs are published in many countries on the same day.

Anonymous works

- Most articles and photographs are anonymous or pseudonymous.
- But: Orphan Works Directive doesn't change national laws on these works.
- In Luxembourg, the publisher is presumed to represent the authors of such works (art 7, para 2, loi de 2001).
- Tentative conclusion: Only if publisher has disappeared, can an anonymous work be orphan.

« Diligent search » itself

- Not a defined term or process, necessarily open ended.
- For each work, the search must be documented.
- Obligatory sources in Directive, plus national sources.
- Lux. Règlement Grand-Ducal is mute whether the national list is exhaustive or illustrative, so any other relevant source should be considered also.
- Real problem: Most sources are not online, some are not digital, hardly any are standardised. Minor but relevant sources may not even be ready or cleared to be consulted

Example sources for Luxembourg

Newspapers, Journals, Magazines and Periodicals

Catalogue of the National Library of Luxembourg

Archives of the National Literature Center

eluxemburgensia.lu digitised collections

ISSN Database

Luxemburgensia-Online

Luxorr

...

Visual Works

Catalogue of the National Library of Luxembourg

Archives of the National Audiovisual Center

EU Orphan Work Database

WATCH

VIAF (Virtual International Authority Files)

ARROW (Accessible Registries of Rights Information and Orphan Works)

Luxorr

...



There is also opportunity

- Although the National library did not use the Orphan Works law for the newspaper campaign, there are opportunities:
- With knowledge of different domains, sources and social circles, it seems entirely possible in Luxembourg to define a reasonable list of sources.
- Shared authority data on persons, places and businesses is also part of the solution. (Digital Cultural Project coordinated by Ministry of Culture)

Unpublished written works

Eligible if:

- when entering collection, authorisation was given by rightsholder to make works available and
- rightsholder can reasonably be expected to agree with consequences of orphan works status.

YOUR TURN TO FIND ORPHANS!



Online services and tools

- Outofcopyright.eu
 - Determine copyright/public domain status with online decision tree
 - Luxembourg jurisdiction included
- Diligentsearch.eu
 - Handbook, online diligent search decision tree
 - Versioned reporting for documentation requirement (pdf export available)

Note: National Library is partner in both projects and both are hosted in Luxembourg datacenter

THE NEXT 2-4 YEARS



National capacity building

- Current workshops at Ministry of Culture lay the basis for collaboration and sharing, leading to structured approach:
 - Building shared authority data, connecting collections.
 - Copyright and licensing: stakeholder consultation, training (starts June 13th).

New clearance options will come

- DSM Copyright Directive contains new tools for clearance (out-of-commerce status, extended collective licences, default fallback exceptions) and new tools for sharing (Text and Data Mining).
- Overall very positive for cultural heritage organisations.

Transposition of Directive

- Within 2-3 years Luxembourg could have new copyright law, new clearance instruments, new rights management structures (data&broker model), beginnings of more and better data.
- « Regtech for access to culture »

By 2022, a new **framework** for digital collections

- Access (leverage of new rights instruments),
- Sharing (participatory),
- Commons (neither state nor market),
- Remix,
- Networked & contemporary
 - (Public broadcasters, Publishers, Wikipedia, Wikidata, Europeana, Creative economy, Open science, Webarchive, ...)

Merci!

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