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## **Amendments to Article 7 on "out of commerce" works of the proposed EU directive on copyright in the digital single market proposed by the National Writers Union (USA):**

### **1. The directive should require a single opt-out scheme applicable to all "out-of-commerce" licensing schemes in all EU countries.**

This is consistent with the goal of a single EU market. It should not be necessary for a writer to opt out separately from each scheme in each country where her work might have been published. Not all writers will want to opt out, of course. But if a writer has already made her work available online -- through self-publication or licensing -- she is unlikely to want to have competing online versions made available through a collective licensing scheme.

### **2. The directive should require that opt-out must be available on a per-writer, not just per-work, basis.**

It is prohibitively burdensome, and often impossible, for a writer to itemize all of her works, especially if they might have been published under different titles in different editions, formats, and languages, or if they include numerous short articles, blog posts, etc. This should be mandated in the directive, not left to the discretion of national legislation.

### **3. The directive should explicitly include self-published and digital versions in the definition of "normal commercial channels" for determining whether a work is "out of commerce".**

Otherwise, as we have already seen in France and the UK, national laws and searches for availability are likely to overlook these new versions of works. Works that are out of print in the original editions will be determined to be "out of commerce" even though they are available on the writer's website or in other formats that are not included in bibliographic databases such as library catalogs, copyright registrations, ARROW, etc.