IFRRO Statement on Orphan works, retracted and withdrawn works and works out of commerce at 32nd WIPO SCCR 13 May 2016

1. Thank you again, Mr. Chair, for allowing IFRRO to take the floor.

2. IFRRO supports initiatives to preserve and make available cumulative knowledge and cultural heritage, and recognises the role of libraries and archives in that respect. We further acknowledge that this includes identifying solutions for the inclusion of orphan works and works out-of-commerce.

3. Before allowing such works to be made available, they must be carefully defined, for instance in line with the EU Orphan Works Directive and the EC facilitated out-of-commerce works MoU signed by IFRRO and the European library, author and publisher organisations. They must only be reproduced or made available under criteria agreeable to rightholders, to ensure that this does not conflict with the normal exploitation of the work or prejudice the interest of the authors.

4. Solutions to enable the digitisation and making available of orphan works and out-of-commerce works require a country-specific approach, considering national legal and other traditions.

5. Orphan works legislation must ensure the right of withdrawal, and remuneration for reappearing rightholders.

6. The reproduction and making available of out-of-commerce works is best handled when voluntary stakeholder initiatives, including licensing arrangements, set the point of departure. Stakeholders have shown their ability to establish workable solutions for the digitisation and making available of such works. This comprises recommended tools, including definitions, criteria for the search for rightholders and model licensing agreements, as well as mechanisms to facilitate rights clearance through the one-stop shop represented by collective management, all tools available from the Digital libraries page on the IFRRO website.
7. The principles of the stakeholder negotiated MoU on library digitization and making available out-of-commerce works, facilitated by the European Commission and signed by the IFRRO, and the European library, authors’ and publishers association is currently being implemented in a number of EU Member States.

8. We recommend that WIPO Member States study examine more closely the Out-of-Commerce MoU that representative organisations of all stakeholders concerned have signed in Europe how they can benefit from this experience. The Stakeholders have also set up a task force and resource pool to assist those who require it, to implement or learn from it. IFRRO, as the coordinator of that task force will be pleased to contribute to obtaining information from the various sectors.

– END –