[IT] Government Adopts Legislative Decree on Permitted Uses of Orphan Works

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Amedeo Arena
Università degli Studi di Napoli "Federico II"

On 10 November 2014, the Italian Council of Ministers adopted legislative decree no. 163 implementing Directive 2012/28/EU on certain permitted uses of orphan works (i.e. works whose rightholders cannot be identified or located) by publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations (see IRIS 2012-10/1).

The above decree, adopted by virtue of the powers delegated to the Government by the Parliament in the European Delegation Act for 2013 (Law of 6 August 2013, no. 96), introduces six additional sections (Sections 69-bis to 69-septies) to the Italian Copyright Act (Law of 22 April 1941, no. 633). The decree also sets out some transitional and financial arrangements to enable its implementation.

The Decree, first and foremost, defines the permitted uses of orphan works, which include making them available to the public and reproducing them for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration. Revenues generated in the course of such uses must be employed exclusively to cover the costs of digitising orphan works and making them available to the public. The name of identified authors and other rightholders must be shown in any use of an orphan work.

The Decree also defines the types of works covered by its provisions. Those works include published books, newspapers, magazines, journals and periodicals, as well as audiovisual works and phonograms contained in collections or produced or commissioned by public service broadcasters prior to 31 December 2002.

A work can only be regarded as “orphan” if none of its rightholders is identified or, even if one or more of them is identified, none is located despite a diligent search having been carried out. The decree provides that the user organisations must carry out that search in good faith by consulting the sources specified in Section 69-septies for all works (the General Public Registrar of Protected Works kept by the Ministry of Culture) or for specific categories of works (e.g. the National Library Database for published books, the International Standard Serial Number for periodicals, the collecting societies archives for audiovisual works, etc.). The outcome of the consultation of those sources must be published on the Ministry of

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Culture website for a period of 90 days. If no rightholder comes forward in order to claim his or her rights over the above works during that period, the works in question are officially considered “orphan”. All works that are regarded as orphan in other EU Member States are ipso iure considered orphan works in Italy.

Finally, the Decree provides that the rightholder of an orphan work may, at any time, claim his or her rights over the work in question, putting an end to its orphan work status. The use of works that are no longer orphan can only be carried out with the consent of the rightholder. A fair compensation is due to rightholders that successfully claim rights over an orphan work. The amount of that compensation is set by agreements entered into between rightholders’ and user organisations’ associations. In the absence of such an agreement or if the parties wish to derogate from the terms of an existing agreement, they must attempt to reach amicable settlement or, failing that, may initiate judicial proceedings so that the amount of the compensation be determined by a court.

Decreto Legislativo 10 novembre 2014, n. 163, Attuazione della direttiva europea 2012/28/UE su taluni utilizzi consentiti di opere orfane, Gazzetta ufficiale n. 261 del 10-11-2014

http://www.governo.it/Governo/Provvedimenti/dettaglio.asp?d=77105

Legislative Decree 10 November 2014, no. 163, Implementation of Directive 2012/28/EU on certain permitted uses of orphan works, Official Journal no. 261 of 10-11-2014

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