[RO] Regulations on the status of orphan works

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On 3 June 2015, the Romanian Government adopted a Draft Law for the completion of the Law no. 8/1996 on copyright and related rights (Legea nr. 8/1996 privind dreptul de autor şi drepturile conexe). The document is the response of the Government to the infringement procedure against Romania triggered by the European Commission on 27 May 2015 (see IRIS 2006-8/27 and IRIS 2015-5/30). The European Commission launched the infringement procedure against Romania and five other EU countries after setting in a reasoned opinion a term of two months to communicate the transposition of the Directive 2012/28/CE on orphan works into national legislation. The term for the transposition was 29 October 2014.

The Draft Law transposes the Directive 2012/28/CE on certain permitted uses of orphan works into national legislation. The act aims to facilitate the digitisation and dissemination of works and other objects protected by copyright or related rights for which the copyright holder could not be identified or located. Before a work or phonogram is to be considered "orphan", a diligent search for the rightholders has to be carried out in good faith. The diligent search is done by consulting the appropriate sources for each category of works and protected objects and it must be carried out prior to their use. If the copyright holder is subsequently identified or located, that work or phonogram does not retain ”orphan” status any longer. Not covered by the regulation are anonymous and pseudonymous works, which do not belong in the category of orphan works.

According to the Draft Law adopted by the Romanian Government, the orphan work status applies to several categories of works and phonograms protected by copyright or related rights that have been published or broadcast for the first time in an EU Member State: books, journals, newspapers, magazines or other writings and cinematographic and audiovisual works and phonograms that are in the collections of libraries, educational establishments or museums accessible to the public, as well as the archives or collections of film heritage institutions, as well as cinematographic and audiovisual works and phonograms produced by public broadcasters until 31 December 2002 which are in their archives. If a work or phonogram is considered an orphan work in another EU Member State, it is also considered an orphan work in Romania and can be used and accessed in accordance with the Draft Law.

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Libraries, educational establishments and museums accessible to the public, archives, film heritage institutions and radio and television public service broadcasting institutions can use orphan works by making them available to the public and by reproducing them for the purpose of digitisation, making available, indexing, cataloging, preservating and restorating.

The institutions mentioned above can use an orphan work only in order to achieve the goals of their public interest missions, notably the preservation of the works and phonograms of their collections and providing access for cultural and educational purposes. These bodies may obtain income from the use of orphan works exclusively for covering the costs of digitisation and their release to the public.

The stipulations of the Draft Law shall not prejudice the provisions on patents, trademarks, industrial designs, utility models, topographies of semiconductor products, type faces, conditional access, the access of radio and TV services to cable broadcasting, the protection of national treasures, legal deposit requirements, restrictive practices and unfair competition, trade secrets, security, confidentiality, data protection and privacy, access to public documents, the law of contract, freedom of the press and freedom of expression of mass-media.

In the absence of these new provisions, the digitisation, reproduction and making available to the public of orphan works would not have been possible, since the exclusive rights of copyright holders in terms of reproduction and making available to the public imply prior agreement of their authors.

Reglementări privind statutul “operelor orfane” - Guvernul României comunciat de presă 03.06.2015

http://gov.ro/ro/guvernul/sedinte-guvern/reglementari-privind-statutul-operelor-orfane

Regulations on the status of "orphan works", Press release, Romanian Government, 3 June 2015

CE declanşează două proceduri de infringement pentru România una în domeniul bancar şi celalată pe legislaţia drepturilor de autor, Euractiv 28.05.2015

http://www.euractiv.ro/ro-ue/CE-declanseaza-doua-proceduri-de-infringement-pentru-Romania-una-in-domeniul-bancar-si-celalata-pe-legislatia-drepturilor-de-autor-663

The EC triggers two infringement procedures against Romania: one in the banking field and the other on the copyright legislation, Euractiv 28 May 2015

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