

ORPHAN WORKS: PROBLEMS OF LEGAL REGULATION

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The problem of the legal regulation of orphan works in the legislation of Ukraine is currently quite accurate. In the Ukrainian legislation, until recently, there was no definition of what orphan works are, which caused numerous problems. Subsequently, in October 2022, a new law "On copyright and related rights" was adopted, in which the legislator already gives recognition to orphan works. Under Article 1, Clause 51 of the Law of Ukraine "On Copyright and Related Rights", **an orphan work, an orphan object** of related rights is a work, phonogram, videogram made public in Ukraine (including what is part of an audiovisual work or other phonogram, videogram), a fixed execution, in respect of which none of the subjects of property rights has been identified as a result of a thorough search, and in the case of identification of such a subject (including objects published anonymously or under a pseudonym) – their location has not been established. The legal collision of orphan works is that their legitimate use is practically impossible without the consent of the author or his/her successors. Traditionally, orphan works are stored in archives and libraries and practically "die" there.

First of all, it is important to point out the reasons why orphan works appear. The reasons for the emergence of orphan works are:

- 1) objective loss of information about the author against his/her will;
- 2) absence of formal procedures regarding the emergence of rights to the work;
- 3) irresponsible attitude of the author;
- 4) the work is the result of the creative activity of several authors who do not know each other;
- 5) the term of copyright protection is too long;
- 6) anonymity on the Internet of authors of works that contain illegal content.

There are about 25 million orphan works in the world; most of them are video games and photos stored in archives. In early doctrinal writings, scholars introduced the idea to apply legal regulation of usage of orphan works as well as of works that are in the public domain. It is worth noting that this is a false opinion. Firstly, for works that are in the public domain, the terms of copyright protection have expired, unlike orphan works, on which this term still applies. Secondly, there are works in the public domain that are not object of legal protection, for example, ideas, concepts, etc. Orphan works have legal protection. So, we cannot apply the same legal regulation to orphan works and works that are in the public domain.

The development of a scheme for the legal usage of orphan works is a priority task of the European Union and Ukraine. Unfortunately, the problem of "orphan works" is not addressed in international universal treaties but is recorded in regional and some national regulatory and legal acts, in particular in Directive 2012/28. There are a few provisions from the directive, which regulate the usage of orphan works: 1) reproduction and further distribution of works subject to exclusive property copyright is possible only with the consent of the right holder. However, in the case of orphan works, it is impossible to obtain such consent; 2) a clear procedure for copyright registration with future control over compliance with copyright and related rights is established; 3) unification of the procedure for recognizing the orphan status of a work in different EU member states will be carried out; 4) creation of large-scale digital libraries. The biggest problem is the legal conflict. The Directive stipulates the obligation to register all copyrighted and related works, but according to the Law of Ukraine "On Copyright and Related Rights" and the Berne Convention for the Protection of Literary and Artistic Works, copyright registration is not mandatory and this creates many uncertainties.

Article 1 of Directive 2012/28 defines its scope, which is based on the subject-object principle. Thus, a list of institutions authorized to digitize and further distribute orphan works is given directly, which include: "public libraries, educational institutions, museums, archives, funds of motion pictures and audio recordings, publishers and organizations of public audio and television broadcasting, established in EU member states".

Article 3 of Directive 2012/28 establishes a condition for granting "orphan" status to works – performing a proper search (diligent search). It must be completed before the usage of the work begins. According to Article 3.2 Directive 2012/28 EU member states must independently determine the sources of proper search, but it is important to use ARROW (Accessible Registries of Rights Information and Orphan Works). Under Article 3.3 of Directive 2012/28, a proper search must be carried out in the EU member state in which the first publication or, in the absence of publication, the first broadcast of the work will take place. The exception is provided only for cinematographic or audiovisual works. Article 4 of Directive 2012/28 establishes the cross-border status of orphan works throughout the EU.

Authors and people who have the copyright to a work can at any time notify about their rights to the work and demand the removal of the "orphan" status from their works. Authors or other people who own the copyright to a work must be paid royalties if they exercise the right to terminate the status of an orphan work.

In conclusion, taking everything abovementioned, we can arrive at the conclusion the proper legal usage of orphan works is really important, in order to not let them "die" in archives. So we need to create a good legal regulation of their usage.

References:

1. Handbook on Copyright and Related Issues for Libraries URL: https://eifl.net/sites/default/files/resources/201409/handbook_rus_05.pdf
2. Піхурець О. В. Розвиток правового регулювання відносин, пов'язаних із використанням «сирітських творів» в Україні та країнах Європейського Союзу / О. В. Піхурець, С. Й. Литвин // Науковий вісник Ужгородського національного університету. Серія: Право. – 2017. – Вип. 44(1). – С. 81-86.
3. Про авторське право і суміжні права: Закон України від 01.12.2022 № 2811-IX. Голос України, 31.12.2022, № 267.
4. Сучасний англо-український юридичний словник: понад 75 тисяч англійських термінів і стійких словосполучень / Львів. нац. ун-т ім. І. Франка ; уклад. Леся Василівна Мисик, Ірина Володимирівна Савка; за наук. ред. В. Т. Нор. – Київ: Ін Юре, 2018. – 1350 с. – (Бібліотека словників "Ін Юре").
5. Штефан О. О. Правовий режим використання сирітських творів / О. О. Штефан // Міжнародний науковий журнал «Інтернаука». – 2017. – № 2(2). – С. 184-191.

UKRAINIAN JUDICIARY IN THE CONTEXT OF MARTIAL LAW

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Access to justice, especially in the wartime, is of great importance for the entire society. Under martial law, the right to judicial protection guaranteed by the Constitution of Ukraine does not cease or become restricted, but it may be the subject to certain specific changes.

At present, the Ukrainian courts can be conditionally divided into those that cannot work at all (their cases have been transferred to other courts located in safer parts of the country) and those that operate on the regular basis, but at the same time follow particular recommendations.

In accordance with Art. 26 of the Law of Ukraine "On the Legal Regime of Martial Law", if courts, operating in the territory where martial law has been introduced, cannot exercise justice, the territorial jurisdiction of judicial proceedings in these courts may be changed by the laws of Ukraine or the location of the courts may be changed in the manner prescribed by law.

Since the beginning of the military aggression by the Russian Federation against Ukraine, the territorial jurisdiction of judicial proceedings has been changed several times for many courts according to the Chairman of the Supreme Court orders. At the beginning of the full-scale war of the Russian Federation against Ukraine, the territorial jurisdiction was changed for 128 courts because of the inability to continue their work.

Therefore, before filing a lawsuit, it is important to consider the possible change of territorial jurisdiction of judicial proceedings. It is important to mention the recommendations of the Supreme Court of Ukraine regarding the work of