

Translation from Finnish
Legally binding only in Finnish and Swedish
Ministry of Education and Culture, Finland

Act on the Use of Orphan Works
(764/2013)

By decision of Parliament, the following is enacted:

Section 1

Scope of application

This Act lays down provisions on the use of orphan works. A work is considered *an orphan work* if all of its authors are not known, identified or located despite a diligent search for rightholders having been carried out and the result of the search having been recorded in a database referred to in section 6 of this Act.

The provisions of this Act on orphan works and their authors also apply to phonograms and audiovisual recordings referred to in chapter 5 of the Copyright Act (404/1961) and to performances recorded therein and to their rightholders, where the recordings and performances shall be considered orphan works in the manner specified in subsection 1.

Section 2

Users of orphan works

The following organisations are entitled to use orphan works in order to achieve aims related to their public-interest missions:

- 1) publicly accessible libraries, museums and educational establishments;
- 2) archives and film and audio heritage institutions;
- 3) public-service broadcasting organisations.

Section 3

Author's authorisation

Where a work has several authors and some of them are known or identified and can be located, the work may be used in accordance with the provisions of this Act only if the authors have authorised this.

Section 4

Subject-matter and scope

This Act applies to the following works and other subject-matter protected under the Copyright Act:

- 1) books, journals, magazines, newspapers and other writings contained in the collections of organisations referred to in section 2, paragraphs 1 and 2 of this Act, which have first been published in a Member State of the European Economic Area, as well as works and other subject-matter protected under the Copyright Act embedded or incorporated in these;
- 2) cinematographic works and phonograms contained in the collections of organisations referred to in section 2, paragraphs 1 and 2 of this Act, which have first been published or broadcast in a Member State of the European Economic Area, as well as works and other subject-matter protected under the Copyright Act embedded or incorporated in these;
- 3) cinematographic works and phonograms produced by public-service broadcasting organisations of Member States of the European Economic Area before 1 January 2003 and contained in their archives, which have first been broadcast in a Member State of the European Economic Area, as well as works and other subject-matter protected under the Copyright Act embedded or incorporated in these.

This Act also applies to such works, cinematographic works and phonograms referred to in subsection 1 and to works and other subject-matter protected under the Copyright Act embedded or incorporated in these that have not been published or broadcast but that have been made available to the public in the collections of an organisation referred to in section 2 with the consent of the author or another rightholder, provided that there are reasonable grounds to assume that the author or another rightholder would not oppose the use of the work, cinematographic work or phonogram in accordance with section 7.

The provisions of this Act concerning orphan works and their use apply to works and other subject-matter referred to in subsection 1 in respect of which a diligent search has been carried out in a Member State of the European Economic Area and which have consequently been registered as orphan works in the online database of the Office for Harmonisation in the Internal Market, when they are being used in Finland.

Notwithstanding this Act, orphan works may be used in the manner specified in chapter 2 of the Copyright Act.

Section 5

Diligent search

Before an organisation can use a work or phonogram in a manner specified in section 7, it shall carry out a diligent search to identify the author or some other rightholder of the work or phonogram and to establish whether the rightholder can be located. The organisation may entrust the search to another organisation or some other body.

Information sources that are appropriate for each category of works and phonograms shall be used in the diligent search.

In respect of phonograms and works other than cinematographic works, a diligent search shall be carried out in that Member State of the European Economic Area where the work or phonogram was first published or, in cases where no publication has taken place, where it was first broadcast. In respect of cinematographic works, a search shall be carried out in that Member State of the European Economic Area in which the producer of the work has its headquarters or habitual residence.

A diligent search in respect of a work or phonogram that has not been published or broadcast shall be carried out in Finland.

If there are reasonable grounds to believe that relevant information on rightholders is to be found in other countries, information sources available in those countries shall also be consulted.

The organisation carrying out a diligent search is responsible for the costs of the search.

Section 6

Information on diligent searches

Organisations shall keep records of their diligent searches and of the results of such searches and communicate the following information, as soon as it becomes available, to the Office for Harmonisation in the Internal Market for the purposes of recording it in the database of the Office:

- 1) title of an orphan work, its category, name of its known or identified author, and date and place of its publication or release;
- 2) information specified in paragraph 1 concerning works that are embedded or incorporated in, or constitute an integral part of, an orphan work;
- 3) dates and places of diligent searches;
- 4) information on the grounds on which a work is considered an orphan work;
- 5) information available to the organisation on any changes, pursuant to section 8, to the status of orphan works that the organisation is using;
- 6) information on the use that the organisation has made of orphan works in accordance with section 7;
- 7) contact information of the organisation.

An organisation that has carried out a diligent search shall store the material concerning a work that has turned out to be an orphan work, produced in the course of the search, and the results of the diligent search until the author of the orphan work identifies himself or herself or is identified or it is established that the author can be located. Information concerning the use of an orphan work shall, however, be stored until a compensation referred to in section 8, subsection 4 has been paid.

Organisations may use personal data emerging in the course of a diligent search only for identifying the rightholders of an orphan work and for communicating the results of the diligent search. Provisions on the processing of material containing personal data are laid down in the Personal Data Act (523/1999). Any material containing personal data shall be destroyed once the compensation referred to in section 8, subsection 4 of this Act has been paid or when it is no longer necessary to store and process the personal data in order to identify the rightholders of orphan works.

Section 7

Use of orphan works

In order to achieve aims related to their public-interest missions, organisations are permitted to:

- 1) reproduce orphan works contained in their collections or archives for the purposes of digitisation, making available to the public, indexing, cataloguing, preservation, and restoration;
- 2) make orphan works available to the public in such a way that members of the public may access the works from a place and at a time individually chosen by them.

To cover costs for digitisation of orphan works and for making them available to the public, organisations may collect charges in connection with the use of orphan works referred to in subsection 1.

The name of a known author shall be indicated in any use of an orphan work.

Where a search referred to in section 5 has not been diligent and a work has erroneously been considered an orphan work, the use of the work is assessed in accordance with the provisions of the Copyright Act.

Section 8

Author's notification

An author of an orphan work may inform an organisation using the orphan work that he or she is the author of the work and provide his or her contact information. The organisation shall communicate the information to the Office for Harmonisation in the Internal Market without delay for the purposes of recording them in the database of the Office. Once the information on the author has been entered in the database of the Office, the work ceases to be an orphan work in respect of the identified author.

A notification referred to in subsection 1 above may also be made by the author's representative, who shall be able to prove in a reliable manner that he or she is authorised to make the notification on behalf of the author.

A person who has identified himself or herself or been identified as an author of an orphan work is considered to be the author or one of the authors of the orphan work in accordance with section

7, subsection 1 of the Copyright Act, unless otherwise shown or unless it is otherwise apparent that the person cannot be the author of the work.

The user of an orphan work shall pay compensation for the use of the orphan work in accordance with section 7 to an author who has identified himself or herself or been identified as the author of the work. When determining the magnitude of the compensation, due account shall be taken of the nature and extent of the use of the work, the market value of the work, and the possible harm caused to the author by the use of the work.

Section 9

Authority to issue decrees

Further provisions are issued by decree of the Ministry of Education and Culture on the following:

- 1) information sources to be used in a diligent search;
- 2) information to be supplied on the diligent search and on the use of orphan works;
- 3) information required from persons identifying themselves as authors of orphan works;
- 4) communication of information to the database of the Office for Harmonisation in the Internal Market.

Prior to issuing the decree referred to in subsection 1, the Ministry of Education and Culture shall consult organisations representing rightholders and organisations using orphan works or associations representing these organisations on which sources are the most appropriate ones for each category of works and phonograms.

Section 10

Entry into force

This Act enters into force on 29 October 2014.

This Act does not apply to works and other items that are not protected under the Copyright Act when this Act enters into force. This Act does not apply to measures taken, agreements made and rights acquired prior to the entry into force of this Act.