

LAW: 4212/2013

Implementation of Directive 2011/77/EU of the European Parliament and the Council of 27th September 2011 and Directive 2012/28/EU of the European Parliament and the Council of 25th October 2012 into Greek Law and amending of Law 2121/1993 “Copyright, related rights and other cultural issues” (OJ 25).

CHAPTER A

Term of protection of copyright and certain related rights

Article 1

Purpose

The purpose of articles 2 to 5 is the harmonization of law 2121/1993 (A 25) with the Directive 2011/77/EU of the European Parliament and the Council of 27th September 2011 amending the Directive 2006/116/EC “for the term of protection of copyright and certain related rights”

Article 2

Amending of article 30 Law 2121/1993 (article 1 par. 1 of Directive 2011/77/EU)

Article 30 of law 2121/1993 is replaced as follows:

“Article 30 Works of joint-authorship and musical compositions with lyrics

For works of joint-authorship and musical compositions with lyrics, if both the contributions of the composer and the author of the lyrics were specifically created for the respective musical composition with lyrics, the term of protection shall last throughout the life of the last surviving author and seventy (70) years after his death, calculated from January 1st of the year that follows the death of the last surviving author”.

Article 3

Amending of article 52 (c) of Law 2121/1993

(article 1 par. 2 (a) of Directive 2011/77/EU)

The second sentence of article 52 (c) of Law 2121/1993 is replaced as follows:

“However,

- if a fixation of the performance otherwise than in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire fifty (50) years from the date of the first such publication or the first such communication to the public, whichever is the earlier,
- if a fixation of the performance in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire seventy (70) years from the date of the first such publication or the first such communication to the public, whichever is the earlier.’

Article 4

Amending of article 52 (d) of Law 2121/1993

(article 1 par. 2 (b) and (c) of Directive 2011/77/EU)

1. In the second and third sentences of article 52 (d) of Law 2121/1993 the word “fifty” is replaced by the word “seventy”.

2. After the fourth sentence of article 52 (d) shall be added as follows:

“aa) If, fifty years after the phonogram was lawfully published or, failing such publication, fifty (50) years after it was lawfully communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity to meet the market needs or does not make it available to the public, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them, the performer may terminate the contract by which the performer has assigned to a phonogram producer at least the exploitation of his reproduction, distribution and making available to the public rights in the fixation of his performance. The right to terminate this contract may be exercised if the producer, within one (1) year from the written notification

by the performer of his intention to terminate the contract pursuant to the previous sentence, fails to carry out both of the acts of exploitation referred to in that sentence. If the above mentioned rights have been transferred to a third party, pursuant to sub case (gg), the written notification will be exercised against the producer, as he is defined in sub case (gg). The right to terminate may not be waived by the performer. Where a phonogram contains the fixation of the performances of a plurality of performers, they may terminate the contracts of the first sentence pursuant to the first sentence of paragraph 4, article 46. If no representative is determined, the provisions of the community of right shall be applied. The termination of the contract of the first sentence in this case has as a legal consequence the expiration of the phonogram producers' rights and any other third party's rights that derives rights of him.

bb) Where a contract of the first sentence of the sub case (aa) gives the performer a right to claim a non-recurring remuneration, the performer shall have the right to obtain an annual supplementary remuneration from the phonogram producer for each full year following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public. The payment has to take place within six (6) months from the end of each financial year. The right to obtain such annual supplementary remuneration may not be waived by the performer.

cc) The overall amount to be set aside by a phonogram producer for payment of the annual supplementary remuneration referred to in sub case bb) shall correspond to 20% of the revenue which the phonogram producer has derived, during the year preceding that for which the said remuneration is paid, from the reproduction, distribution and making available of the phonogram in question, following the 50th year after it was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.

dd) The right to obtain an annual supplementary remuneration as referred to in sub case (bb) is administered by the collecting societies of the performers.

ee) Phonogram producers are required on request to provide annually and in total (for all performers who are entitled to the annual supplementary remuneration and for all the phonograms) to the collecting societies which administer the annual supplementary remuneration of sub case (bb), any information which may be necessary in order to secure payment of that remuneration.

ff) Where a performer is entitled to recurring payments, neither advance payments nor any contractually defined deductions, in relation to the specific phonogram, shall be deducted from the payments made to the performer following the 50th year after the phonogram was lawfully published or, failing such publication, the 50th year after it was lawfully communicated to the public.

gg) A phonogram producer for the purpose of the above mentioned subcases (aa) to (ff) is considered to be the primary beneficiary or the successor in title or any third party that the relevant rights have been transferred to.

3. The fifth and sixth sentences of case (d) of article 52 constitute the new case (e) of article 52.

4. Cases (e), (f), (g) and (h) of article 52 are renumbered respectively as cases (f), (g), (h) and (i).

Article 5

Amending of Article 68A Law 2121/1993

(article 1 pars. 3 and 4 of Directive 2011/77/EU)

1. At the end of par. 1 of article 68A Law 2121/1993 sentences shall be added as follows:

“The term of protection provided for in article 30 of this law shall apply to musical compositions with lyrics, if either the musical composition or the lyrics were protected in at least one Member State of the European Union on November 1st, 2013 and to musical compositions with lyrics which come into being after that date, without prejudice to any acts of exploitation that have been performed before November 1st, 2013 and any acquired rights from third parties. If, due to this provision, there is a revival of rights that have been transferred or otherwise assigned to third parties based on license or contract, the extension of the term of protection shall benefit the final beneficiary or the special assignee thereof. Otherwise, the heir of the creator will benefit. The term of protection provided in cases (c) and (d) of article 52 applies to the material fixations of the performances and to the phonograms in relation to which the performer or the phonogram producer are still protected, by virtue of those provisions in the version thereof in force on 30 October 2011, as

at 1 November 2013, and to fixations of performances and phonograms which come into being after that date”.

2. After paragraph 1 of article 68A Law 2121/1993 a new paragraph 1a shall be added as follows:

“1a. In the absence of clear contractual indications to the contrary, a contract on transfer or assignment of article 52 (aa) and (dd), concluded before 1 November 2013 shall be deemed to continue to produce its effects beyond the moment at which, the performer would no longer be protected, according to article 52(c), in the version thereof in force before the implementation of Directive 2011/77 into national law”.

Chapter B

Certain permitted uses of orphan works

Article 6

Purpose

The purpose of articles 7 and 8 of this law is the harmonization of Law 2121/1993 with Directive 2012/28/EU of the European Parliament and the Council of 25 October 2012 “on certain permitted uses of orphan works” (OJ L299/5).

Article 7

Addition of Article 27A in Law 2121/1993

(articles 1, 2, 3, 4, 5 and 6 of Directive 2012/28/EU)

After article 27 of Law 2121/1993 a new article 27A shall be added as follows:

“Article 27A

Certain permitted uses of orphan works

1. It is permitted to be made accessible to the public within the meaning of article 3 (1) (h) and to be reproduced for the purposes of digitization, making available to the public, indexing, cataloging, preservation or restoration (permitted uses) by publicly accessible libraries,

educational establishments or museums, archives or film or audio heritage institutions, as well as from public-service broadcasting organisations established in a Member State of the European Union (beneficiaries of orphan works), works in their collections, for which no right holder has been identified or even if is identified, none has been located despite a diligent search carried out by the beneficiaries of orphan works, according to the terms of this article (orphan works).

2. This regulation shall apply only to:

a. works published in the form of books, journals, newspapers, magazines or other writings contained in the collections of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions;

b. cinematographic or audiovisual works and phonograms contained in the collections of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions;

c. cinematographic or audiovisual works and phonograms produced by public-service broadcasting organisations up to 31 December 2002 and contained in their archives;

d. works and other protected subject-matter that are embedded or incorporated in, or constitute an integral part of, the above mentioned works or phonograms,

to the extent that those works (of cases a, b, c, d) are protected by copyright or related rights and are first published in a Member State of the European Union or, if not published, are first broadcast in a Member State of the European Union. If these works are not published or broadcast, they can be used by the beneficiaries of orphan works only if:

a) they have been made publicly accessible by anyone of the beneficiaries of orphan works (even in the form of a lending) with the consent of the rightholders, and

b) it is reasonable to assume that the rightholders would not oppose the permitted uses referred to in this article.

3. Where there is more than one rightholder in a work or phonogram, and not all of them have been identified or, even if identified, located after a diligent search has been carried out and recorded in accordance with paragraphs 6 and 7, the work or phonogram may be used in accordance with the paragraphs hereinabove provided that the rightholders that have been

identified and located have, in relation to the rights they hold, authorised the beneficiaries of orphan works to carry out the permitted uses in relation to their rights.

4. The use of orphan works is permitted to the beneficiaries of orphan works only in order to achieve aims related to their public-interest missions, in particular the preservation of, the restoration of, and the provision of cultural and educational access to, works and phonograms contained in their collections. The beneficiaries of orphan works may generate revenues in the course of such uses, for the exclusive purpose of covering their costs of digitising orphan works and making them available to the public.

5. The beneficiaries of orphan works indicate the name of identified authors and other rightholders in any use of an orphan work with the following labelling: “Orphan work: [...] [no of entry in the Single Online Database of the Office for Harmonization in the Internal Market]”.

6. By issuing a decision, the Hellenic Copyright Organization Board of Directors will determine the appropriate sources for a diligent and in good faith search to be carried out by the beneficiaries of orphan works to identify and locate the rightholders according to paragraph 1 in a work or phonogram, including works and protected subject matter contained in them prior to their use. The diligent search shall be carried out by the beneficiaries of orphan works or by third parties on behalf of the beneficiaries of orphan works, in the European Union Member State of the first publication, or in the absence of publication, of the first broadcast. In respect of cinematographic or audiovisual works the producer of which has his headquarters or habitual residence in a Member State of the European Union the diligent search should be carried out in the Member State of his headquarters or habitual residence. If the works have neither been published nor broadcast pursuant to the last sentence of paragraph 2, the diligent search shall be carried out in the Member State of the European Union where the beneficiary of orphan works use that made the work publicly accessible is established. If there is evidence to suggest that a search in sources of information of other countries is to be carried out, the search in those other countries should be carried out also.

7. Beneficiaries of orphan works that carry out a diligent search shall keep a search record on file throughout the term of use of the orphan work and seven (7) years after the termination of such use and provide concrete information to the Hellenic Copyright Organization, that

shall immediately forward this information to the Single Online Database of the Office for Harmonization in the Internal Market. Such information shall contain:

- a) a full description of the orphan work and the names of the identified authors or rightholders,
- b) the results of the diligent search carried out by the beneficiaries of orphan works, which led to the conclusion that a work or a phonogram is considered an orphan work,
- c) a statement from the beneficiaries of orphan works for the permitted uses they intend to make,
- d) a possible change to the orphan work status of a work (notification of new data that they have been informed of),
- e) contact information of the beneficiaries of orphan works,
- f) any other information as specified by decision of the Hellenic Copyright Organization Board of Directors and posted on the Hellenic Copyright Organization's website, according to the procedure determined by the Office for Harmonization in the Internal Market regarding the Database.

8. A diligent search is not required for works that have already been recorded in the Single Online Database of the Office for Harmonization in the Internal Market as orphans. A work or phonogram shall be considered an orphan work if it has been characterized as such in any Member State of the European Union.

9. If the rightholder of a work or phonogram or other protected subject-matter that has been recorded as an orphan comes forward, then he has the right to put an end to the orphan work status of the work in so far as his rights are concerned and ask for the end of use of the work by the beneficiary of orphan works, as well as for the payment of compensation for the use of the work that has been made by the beneficiary of orphan works. The beneficiary of orphan works that makes use of the work is liable for the end of orphan work status of a work. The beneficiary of orphan works will have to decide within twenty (20) working days, calculated from the day following the date the application is filled by the person appearing as the rightholder, if the application and the submitted evidence by the appearing as rightholder is sufficient to establish a right on the specific orphan work, and it either characterises the work as "non-orphan" or rejects the application. If the beneficiary of orphan works does not decide on the application within the above mentioned period or if, despite having approved the application, continues to make use of the work, then the provisions of articles 63A to 66D shall

apply. If a work is rendered “non-orphan” according to the Single Online Database of the Office for Harmonization in the Internal Market the beneficiary of orphan works is obliged to end its use within ten (10) working days from the reception of the relevant notice from the above mentioned Office.

The compensation shall amount to half of the remuneration that is, usually or according to law, paid for the kind of use that has been made by the beneficiary of orphan works and the payment of such compensation shall be made within two (2) months from the end of orphan work status of a work. If the parties do not reach an agreement, the terms, the period, and the level of compensation shall be determined by the Court of First Instance of Athens by interim measures.

10. In any case, if it is proven that a work has been wrongly found to be an orphan work due to a search which was not diligent and in good faith, then provisions of articles 63A to 66D shall apply.

11. The Hellenic Copyright Organization shall not be liable for the diligent search carried out by a beneficiary of orphan works, nor liable whether an orphan work status of a work is established or is ended.

12. This article shall be without prejudice to the provisions on anonymous or pseudonymous works, and to the provisions on rights management according to the current law”.

Article 8

Amendment of article 68A Law 2121/1993 –Date of application

(article 8 of Directive 2012/28/EU)

After par. 2 of article 68A of Law 2121/993 a new paragraph 3 shall be added as follows:

“3. The provisions on orphan works provided for in article 27A shall apply to all the works and phonograms protected by copyright or related rights for the first time from 29.10.2014 onwards, while they shall be without prejudice to the validity of acts concluded and rights acquired before the above mentioned date”.

Article 9

Amendment of article 71 of Law 2121/1993

In article 71 of Law 2121/1993 new paragraphs 9 and 10 shall be added as follows:

“9. Articles 30, 52 case (c) second sentence, 52 case (d) second and third sentence, 52 case (d) sub cases from (aa) to (gg), 68A paragraph 1 sentences third to sixth and 68A paragraph 1a constitute an application of Directive 2011/77/EU of the European Parliament and the Council of 27th September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights.

10. Articles 27A and 68A paragraph 3 constitute an application of Directive 2012/28/EU of the European Parliament and Council of 25th October 2012 on certain permitted uses of orphan works”.

Article 10

Entry into Force

This Law shall enter into force from the date of its promulgation in the Official Journal, unless it is stated otherwise in its individual provisions.

We command the promulgation of this Law in the Official Journal and its implementation as a law of the State.