

283/2014

ACT

of 12 September 2014,

amending Act No 618/2003 on copyright and rights related to copyright (the Copyright Act), as amended

The National Council of the Slovak Republic has adopted the following act:

Article I

Act No 618/2003 on copyright and rights related to copyright (the Copyright Act) as amended by Act No 84/2007, Act No 220/2007, Act No 453/2008, Act No 349/2012, Act No 289/2013 and Act No 352/2013, shall be amended as follows:

1. In section 5 a paragraph (26) shall be added as follows:

“(26) Diligent search is a search for information carried out in good faith using the information sources included in Annex 2 for the category of works specified in Annex 2 for the purpose of determining whether a given work is an orphan work. A diligent search shall be carried out

- a) in the territory of the Member State of the European Union (hereinafter a “Member State”) or the State party to the Agreement on the European Economic Area (hereinafter an “EEA State”) in which the work was first published or, if not published, first broadcast.
- b) in the territory of the Member State or EEA State in which the producer of the original audiovisual work has his habitual residence or headquarters,
- c) in the territory of the Member State or EEA State in which person is established that provided public access to the work with the author’s consent in the case of an unpublished or unbroadcast work falling under the second sentence of section 12a(2),
- d) in other states than states falling under points (a) to (c) if there are indications that information on authors can be found in these other states.”.

2. After section 12 shall be inserted sections 12a to 12c whose text, including titles, shall be as follows:

“Orphan work
Section 12a

(1) An orphan work is a literary work in written form, in particular a book, magazine or newspaper, a musical work in written form or an audiovisual work, the author of which cannot be identified, or if identified cannot be located despite a diligent search, and which is deposited within an entity under section 31a(1).

(2) The provisions of paragraph (1) shall apply to a work that was first published or, if not published, first broadcast in a Member State or EEA State. The provisions of paragraph (1) shall also apply to a work that was

not published or broadcast but public access to the work was otherwise granted with the author's permission by an entity under section 31a(1) if it is reasonable to suppose that the author would not object to its use pursuant to section 31a.

(3) If a work has more than one author and some of the authors were not identified, or were identified but were not located despite a diligent search, the work shall be considered an orphan work only in relation to the authors who were not identified or were not located.

(4) A work that is considered an orphan work in any Member State or EEA State shall be considered an orphan work pursuant to paragraph (1).

(5) An author shall be entitled to put an end to orphan work status by written notification of authorship sent to the Slovak National Library, 1b), which shall immediately notify the entity using the orphan work pursuant to section 31a.

(6) An author who has put an end to orphan work status pursuant to paragraph (5) shall be entitled to equitable remuneration from an entity that has used the work pursuant to section 31a. Determination of the amount of equitable remuneration shall take into account the conditions laid down in section 45(1).

(7) A work shall not be considered to be an orphan work if it ceases to satisfy the conditions laid down in paragraph (1) or if the author puts an end to orphan work status pursuant to paragraph (5).

Section 12b

The provisions of section 5(26), section 12a and section 31a shall apply mutatis mutandis to a work that is part of a work under section 12a(1) or connected therewith.

Section 12c

Out-of-commerce works

(1) an out-of-commerce work is a published literary work in written form, in particular a book, magazine or newspaper,

(a) copies of which can no longer be acquired through paid transfer of ownership rights; this does not apply to the purchase of something previously owned,

(b) that is deposited in a library, 1c) an archive 1d) or a museum 1e) and

(c) that is inscribed in the publicly accessible list of out-of-commerce works (hereinafter the "list") kept by the Slovak National Library.

(2) The provisions of paragraph (1) shall apply mutatis mutandis also to photographic works and works of visual art that are part of a work under paragraph (1) or are joint with it.

(3) A proposal for insertion of a work under subsection (1) into the list can be made by a natural person or a legal entity. Any proposal for insertion of a work into the list shall be published on the website of the Slovak National Library without undue delay.

(4) The Slovak National Library shall insert a work under paragraph (1) into the list if, within three months of the filing of the proposal for insertion of the work into the list,

a) the Slovak National Library found that it was not possible to acquire a copy of the work by paid transfer of ownership rights despite making reasonable efforts and subject to usual terms, and

b) the author did not file a written objection to the insertion of the work into the list.

(5) The author is entitled to request a legal entity whose establisher is the ministry to remove an out-of-commerce work from the list. The Slovak National Library shall remove an out-of-commerce work without undue delay from delivery of the written request of an author pursuant to the first sentence or after delivery of notification by a collective management organisation on an author's opting out of collective rights management pursuant to paragraph (6).

(6) If an author has not explicitly opted out of collective management of his rights, the user is entitled to use the out-of-commerce work by making copies, making the work available to the public or publicly distributing copies by sale or other forms of assignment of title under an agreement concluded with the relevant collective management organisation representing a significant number of authors for works under paragraph (1), even if the collective management organisation does not represent the author for the out-of-commerce work."

Footnotes 1b to 1e shall read:

"1b) Section 6 of Act No 183/2000 on libraries, amending Act of the Slovak National Council No 27/1987 on state management of monuments and amending Act No. 68/1997 on the Matica Slovenská, as amended.

1c) Section 3(1) of Act No. 183/2000 as amended.

1d) Section 1 of Act No. 395/2002 Z. z. on the archives and registries and on the amendments of the certain acts, as amended,

1e) Section 2(5) and (6) of Act No 206/2009 on museums and galleries and the protection of items of cultural value and amending Act of the Slovak National Council No 372/1990 on infractions, as amended, and amending certain acts, as amended by Act No 38/2014.”.

3. In section 23(1) the words “European Union (hereinafter referred to as “member state”)” and the words “Agreement on the European Economic Area (hereinafter referred to as “EEA state”)” shall be omitted.

4. In section 31(1) the words “Library³) archive⁴) or museum^{4a})” shall be replaced by the words Library, archive or museum”.

Footnotes 3, 4 and 4a shall be omitted.

5. After section 31 shall be inserted section 31a including its title as follows:

“Section 31a
Use of an orphan work

(1) An orphan work can be used without the author’s consent by a library, archive, museum, school or legal depository pursuant to special regulations^{1f}) only for education and cultural purposes and for the fulfilment of public interest missions

a) by making copies of the orphan work for the purposes of digitisation, indexing, cataloguing, preservation, restoration or for providing public access to the work,

b) by making the orphan work available to the public.

(2) An entity under paragraph (1) shall not use the orphan work to obtain direct or indirect property benefit; only compensation of effectively expended costs can be charged.

(3) In the case of use under paragraph (1) in relation to authors who have been identified, the provisions of the third sentence of section 25 shall apply mutatis mutandis.

(4) Use pursuant to paragraph (1) shall not result in an obligation to pay remuneration to the author; it is without prejudice to the provisions of section 12a (6).

(5) The entity under paragraph (1) shall maintain records of the diligent search and provide the Slovak National Library without undue delay and in the set format with

(a) the results of the diligent searches which have led to the conclusion that a work is considered an orphan work,

(b) information on the use of orphan works by the entity under paragraph (1),

(c) information on changes in the status of the orphan work pursuant to section 12a(5) that the entity used pursuant to paragraph (1),

(d) the entity’s contact information.

(6) The Slovak National Library shall, without undue delay, forward information pursuant to paragraph (5) to the Office for Harmonization in the Internal Market,^{1g}) which maintains and manages the public database of orphan works.”.

Footnotes 1f and 1g shall read:

“1f) Section 33(1) of Act No 343/2007 on conditions for the evidence, public distribution and storage of audiovisual works, multimedia works and phonograms of artistic performances and the amendment of certain acts (the audiovisual act), as amended.

1g) Regulation (EU) No 386/2012 of the European Parliament and of the Council of 19 April 2012 on entrusting the Office for Harmonization in the Internal Market (Trade Marks and Designs) with tasks related to the enforcement of intellectual property rights, including the assembling of public and private-sector representatives as a European Observatory on Infringements of Intellectual Property Rights (OJ L 129, 16.5.2012).”.

6. In section 71(1) after the words “section 12” shall be inserted the word “12b, “.

7. In section 71 a paragraph (3) shall be added as follows:

“(3) The provisions of section 5(26), section 12a, 12b and 31a shall apply mutatis mutandis to an audio recording (phonogram).”.

8. In the annex, point 9 shall be added as follows:

“9. Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (OJ L 299, 27.10.2012).”.

9. The existing annex shall be renamed Annex 1 and an Annex 2 shall be added whose text, including the title, shall be as follows:

**“Annex 2
to Act No 618/2003
as amended by Act No 283/2014**

LIST OF INFORMATION SOURCES FOR DILIGENT SEARCHES

The information sources for the performance of diligent searches include:

(1) for books:

- (a) legal deposit, library catalogues and authority files maintained by libraries and other institutions,
- (b) the publishers' and authors' associations in the respective country,
- (c) existing databases and registries, WATCH (Writers, Artists and their Copyright Holders), the ISBN (International Standard Book Number) and databases listing books in print,
- (d) the databases of the relevant collective management organisations in particular reproduction rights organisations,
- (e) sources that integrate multiple databases and registries, including VIAF (Virtual International Authority Files) and ARROW (Accessible Registries of Rights Information and Orphan Works),

2. for newspapers, magazines, journals and periodicals:

- (a) the ISSN (International Standard Serial Number) for periodical publications,
- (b) indexes and catalogues from library holdings and collections,
- (c) legal deposit,
- (d) the publishers' associations and the authors' and journalists' associations in the respective country,
- (e) the databases of relevant collective management organisations including reproduction rights organisations,

3. for works of visual art, photography and architecture, that are contained in books, journals, newspapers and magazines or other works:

- (a) the sources referred to in points (1) and (2),
- (b) the databases of the relevant collective management organisations, in particular for works of visual art, photography and architecture and including reproduction rights organisations,
- (c) databases of picture agencies,

4. for audiovisual works and phonograms:

- (a) legal deposit,
- (b) the producers' associations in the respective country,
- (c) databases of film or audio heritage institutions and national libraries,
- (d) databases with relevant standards and identifiers such as ISAN (International Standard Audiovisual Number) for audiovisual material, ISWC (International Standard Music Work Code) for musical works and ISRC (International Standard Recording Code) for phonograms,
- (e) the databases of the relevant collective management organisations, in particular for authors, performers, phonogram producers and audiovisual producers,
- (f) credits and other information appearing on the work's packaging,
- (g) databases of other relevant associations representing a specific category of rightholders.”.

Article II

This Act shall enter into effect on 29 October 2014

Andrej Kiska in his own hand
Pavol Paška in his own hand
Robert Fico in his own hand