



**CABINET OF MINISTERS OF UKRAINE
RESOLUTION**

of 15 December 2023

No 1312

Kyiv

On Approval of the Procedure for Acquisition and Loss of the Status of Orphan Works, Phonograms, Videograms and Performances Recorded Therein, Conditions for Their Authorised Use and Maintenance of the Register

In accordance with part four of Article 29 and part three of Article 44 of the Law of Ukraine ‘On Copyright and Related Rights’, the Cabinet of Ministers of Ukraine **decides**:

to approve the Procedure for acquisition and loss of the status of orphan works, phonograms, videograms and performances recorded therein, conditions for their authorised use and maintenance of the Register, which is added.

**Prime Minister of
Ukraine**

D. SHMIGAL

**Approved by the Resolution
of the Cabinet of Ministers of Ukraine
of 15 December 2023 No 1312**

The Procedure for Acquisition and Loss of the Status of Orphan Works, Phonograms, Videograms and Performances Recorded Therein, Conditions for Their Authorised Use and Maintenance of the Register

1. This Procedure defines the mechanism for acquisition and loss of the status of orphan work, an orphan phonogram, an orphan videogram and performances recorded therein, conditions for their authorised use, as well as maintenance of the Register of orphan works.

2. In this Procedure, the terms are used in the following meaning:

bulletin is an official electronic bulletin “Copyright and Related Rights” issued by the National Intellectual Property Authority;

institution means a library, museum with open access for visitors, archive or organisation for preservation of audio and video recordings, in the funds (collections) of which works, phonograms, videograms and performances recorded therein are stored;

register of orphan works (register) means an information and communication system providing for collection, accumulation, protection, accounting, display, processing of information on orphan works, phonograms, videograms and performances recorded therein, as well as provision of register information;

thorough search - taking measures to identify copyright holders and/or related rights holders and to establish their location properly.

Other terms are used in the meaning given in the Laws of Ukraine “On Copyright and Related Rights”, “On Libraries and Librarianship”, “On Cinematography”, “On Museums and Museum Business”, “On Electronic Documents and Electronic Document Management”, “On Electronic Trust Services”.

3. A thorough search shall be carried out by the institution in respect of the work, phonogram, videogram and performances recorded therein, which the institution intends to use in accordance with the terms of the permitted use if they acquire status of an orphan.

4. A thorough search shall be carried out by publishing an announcement on the search for copyright holders and/or related rights holders on the official website of the National Intellectual Property Authority and in the bulletin, as well as by searching the following sources:

1) for works published in a book, magazine, newspaper or other written (printed) publication:

reference and search apparatus of national and state libraries;

sources of state bibliography issued by the State Scientific Institution “Book Chamber of Ukraine named after Ivan Fedorov”;

the WATCH database (‘Writers, Artists and Holders of Their Copyrights’);

ISBN (International Standard Book Number) database - for books;

ISSN database (International Standard Serial Number) - for periodicals;

VIAF database (Virtual International Authority File);

database of orphan works of the European Union Intellectual Property Office (EUIPO Orphan Works Database);

data of the State Register of Certificates of Registration of Copyright to Work and the State Register of Contracts Relating to the Author’s Right to a Work;

data of the Customs Register of Intellectual Property Rights;

2) for audiovisual works, phonograms, videograms and performances recorded therein:

reference and search apparatus of the Central State Audiovisual and Electronic Archive;

data of the State Register of Films;

data of the State Register of Certificates of Registration of Copyright to Work and the State Register of Contracts Relating to the Author's Right to a Work;

database of orphan works of the European Union Intellectual Property Office (EUIPO Orphan Works Database);

data of the Customs Register of Intellectual Property Rights.

5. In order to publish an announcement, an institution shall submit to the National Intellectual Property Authority an application for search of copyright and/or related rights holders (hereinafter referred to as the application for search) in the form approved by the National Intellectual Property Authority.

The application for search may concern one work, phonogram, videogram and performances recorded therein or several related (used) copyright and/or related rights objects, shall be drawn up in the state language and submitted in one copy. The institution shall be responsible for the accuracy of the information specified in the application for search.

The National Intellectual Property Authority shall consider the application for search within one month from the date of its receipt and return it to the institution in case of its non-compliance with the form approved by the National Intellectual Property Authority and/or the requirements of this Procedure.

In case of compliance of the application for search with the form approved by the National Intellectual Property Authority and the requirements of this Procedure, the National Intellectual Property Authority shall publish the search announcement on its official website and in the bulletin free of charge.

6. Within six months from the date of publication of the search announcement on the official website of the National Intellectual Property Authority and in the bulletin (whichever date is later), a person who is a copyright and/or related rights holder shall notify the National Intellectual Property Authority and the institution in writing by means of postal or electronic communication of his/her copyright and/or related rights, as well as his/her contact details and location (for a legal entity) or place of residence (for an individual).

If a person who is a copyright and/or related rights holder has provided incomplete data in accordance with the search announcement, the National Intellectual Property Authority has the right to make an additional request to such person

7. In addition to the measures of thorough search, the institution shall have the right to take other actions to identify copyright and/or related rights holders and their location (place of residence) in accordance with the legislation, the results of which shall be submitted to the National Intellectual Property Authority for consideration of the application for acquisition of the status of orphan work, phonogram, videogram and performances recorded therein (hereinafter referred to as the application for acquisition of the status).

8. The institution may apply to the National Intellectual Property Authority with the application for acquisition of the status if, as a result of a thorough search, the relevant copyright holder and/or related rights holder has not been identified, and if they have been identified, their location (place of residence) has not been established.

9. The application for acquisition of the status shall be submitted in the form approved by the National Intellectual Property Authority.

10. The application for acquisition of the status may apply to one work, phonogram, videogram and performances recorded therein or to several related (used) objects of copyright and/or objects of related rights and shall contain:

1) name of the authority to which it is submitted;

2) information about the institution: full name of the legal entity, code according to the EDRPOU, location, address for correspondence, telephone number, e-mail address (if any). If the application for acquisition of the status is submitted by a representative of the institution, it shall additionally contain information about the representative;

3) information on the type of copyright object and/or related rights objects in respect of which the application for acquisition of the status is submitted, their names and information on their publication in Ukraine;

4) information about copyright and/or related rights holders (including the name of the copyright and/or related rights holder, a pseudonym), in particular, if such data are identified as a result of a thorough search;

5) a list of sources used by the institution for conducting a thorough search, indicating the dates and results of the search;

6) information on the publication of the search announcement on the official website of the National Intellectual Property Authority and in the bulletin;

7) information that the institution is not the entity affiliated with the aggressor state or a sanctioned entity;

8) a list of documents attached to the application for acquisition of the status.

11. The application for acquisition of the status shall be accompanied by:

a screen shot or an extract, a reference, which records the wording and results of search requests in databases (registers, catalogues, etc.) available for online searches;

information submitted by the institution in accordance with paragraph 7 of this Procedure (if any);

a document confirming the powers of the representative (if the application for acquisition of the status is submitted by the representative of the institution).

12. The application for acquisition of the status shall be made in the state language. If the documents attached to the application for acquisition of the status are in a foreign language, their translation into the state language shall be provided.

The application for acquisition of the status shall be signed by the head of the institution or its representative, indicating the full title of the person signing the application, his/her surname, name, patronymic (if any), date of signing the application and shall be sealed (if any).

The head of the institution or its representative shall affix an electronic signature based on a qualified public key certificate to the application for acquisition of the status in the form of an electronic document.

13. The document confirming the authority of the institution's representative shall be executed in accordance with the requirements of the law.

The representative of the institution may be an individual or a legal entity.

If the representative acts on the basis of a power of attorney issued by the institution, the original power of attorney or a duly certified copy thereof shall be submitted.

The power of attorney shall be drawn up in any form, taking into account the requirements established by the Civil Code of Ukraine. The power of attorney shall contain:

surname, name, patronymic (if any) or full name of the representative

full name of the institution;

the name of the body (National Intellectual Property Authority), for representation in which the person to whom the power of attorney is issued is appointed;

clearly defined legal actions to be performed by the representative;

the date of the power of attorney.

The power of attorney shall be signed by the head of the institution, taking into account the requirements specified in paragraph 12 of this Procedure.

14 The application for acquisition of the status and the documents attached thereto shall be submitted in paper or electronic form. The way of submission is chosen by the institution.

The application for acquisition of the status and the documents attached thereto shall be sent in paper form to the postal address of the National Intellectual Property Authority. Copies of the documents attached to the application for acquisition of the status shall be certified by the signature of the head of the institution or its representative.

The application for acquisition of the status and the documents attached thereto shall be submitted in electronic form through the information and communication system of the National Intellectual Property Authority. The copies of documents attached to the application for acquisition of the status shall be certified by the head of the institution or its representative using an electronic signature based on a qualified public key certificate.

15. The institution shall be responsible for the accuracy of the information provided in the application for acquisition of the status and the documents attached thereto. In case of reasonable doubts as to the accuracy of the said information, the National Intellectual Property Authority may send a request to the institution to provide evidence confirming the said information.

16. The institution shall have the right to withdraw the submitted application for acquisition of the status at any stage of its consideration until the National Intellectual Property Authority makes a decision on recording the data on the orphan work, phonogram, videogram and performances recorded therein into the Register.

17. The National Intellectual Property Authority shall consider the application for acquisition of the status and the documents attached thereto for compliance with the requirements specified in paragraphs 9-14 of this Procedure within one month from the date of receipt. In case of non-compliance of the application for acquisition of the status and the documents attached thereto with the said requirements, the National Intellectual Property Authority shall notify the institution thereof in writing.

If within one month from the date of receipt of the notification on the need to eliminate deficiencies the National Intellectual Property Authority does not receive from the institution the missing and/or properly executed documents, the application for acquisition of the status shall be left without consideration, and the institution shall be notified thereof in writing. The institution

may re-file the application for acquisition of the status in compliance with the requirements of paragraphs 9-14 of this Procedure.

In case of return of a postal item with documents that were not received by the institution for reasons beyond the control of the National Intellectual Property Authority, it shall be considered that such documents were properly delivered to the addressee. The date of receipt of such postal item by the institution is considered to be the date when the postal notification was marked with the reasons for non-delivery of the item.

18. The National Intellectual Property Authority shall consider the application for acquisition of the status and the documents attached thereto within a period not exceeding 60 calendar days from the date of receipt of the application for acquisition of the status by the National Intellectual Property Authority.

Based on the results of consideration of the application for acquisition of the status and the documents attached thereto, the National Intellectual Property Authority shall decide to record into the Register the data on the orphan work, phonogram, videogram and performances recorded therein or to refuse to record the said data into the Register.

The National Intellectual Property Authority shall decide to refuse to record the data on the orphan work, phonogram, videogram and performances recorded therein into the Register if the submitted application for acquisition of the status and the documents attached thereto do not meet the requirements of this Procedure.

19. In the decision on recording in the Register the data on an orphan work, phonogram, videogram and performances recorded therein, the National Intellectual Property Authority shall indicate the data on the respective subject matter based on the list of register data specified in paragraph 37 of this Procedure.

The form of the decision on recording into the Register the data on an orphan work, phonogram, videogram and performances recorded therein, as well as the form of the decision on refusal to record such data into the Register shall be approved by the National Intellectual Property Authority.

The National Intellectual Property Authority shall send a certified copy of the decision to the correspondence address of the institution within five working days from the date of making the decision.

20. The National Intellectual Property Authority shall within 10 working days from the date of making the decision on recording into the Register the data on an orphan work, phonogram, videogram and performances recorded therein record into the Register the data specified in the decision.

After recording the data into the Register, the National Intellectual Property Authority shall publish such data on its official website and in the bulletin free of charge.

21. A work, phonogram, videogram and performances recorded therein shall acquire the status of an orphan from the date of recording of such object into the Register by the National Intellectual Property Authority.

22. A copyright holder and/or a holder of related rights, as well as a person who, in accordance with the Law of Ukraine 'On Copyright and Related Rights', has the right to use a copyright or related rights object (hereinafter referred to as the 'applicant'), shall have the right to submit an application to the National Intellectual Property Authority for loss of the status of orphan work,

phonogram, videogram and performances recorded therein (hereinafter referred to as the 'application for loss of the status').

23. The application for loss of the status shall be submitted in the form approved by the National Intellectual Property Authority.

24. The application for loss of the status shall be submitted to the National Intellectual Property Authority with simultaneous sending of its copy to the institution, which submitted the application for acquisition of the status, at the address indicated in the Register.

25. The application for loss of the status may concern one work, phonogram, videogram and performances recorded therein or several related (used) objects of copyright and/or objects of related rights and shall contain:

information about the applicant: surname, first name, patronymic (if any), registration number of the taxpayer's account card or series (if any) and passport number (for an individual who, due to his/her religious beliefs, has refused to accept the taxpayer's account card and has notified the relevant supervisory authority and has a mark in the passport), details of the foreigner's passport document or a document certifying a stateless person, a unique record number in the Unified State Demographic Register (if any) and/or the full name of the legal entity, code according to the EDRPOU or registration number in a foreign country (for non-residents), location, address for correspondence, telephone number, e-mail address (if any). If the application for loss of the status is submitted by the applicant's representative, it shall additionally contain information about the representative;

the serial number in the Register, which contains the data on an orphan work, phonogram, videogram and performances recorded therein, in respect of which the application for loss of the status is submitted;

data on the type of copyright object and/or objects of related rights in respect of which the application for loss of the status is submitted, their names;

a reasoned confirmation of the applicant's property rights to a work, phonogram, videogram and performances recorded therein or rights to use such objects with reference to the grounds for acquisition of rights and the term of validity of the respective rights (the grounds shall not be specified if the applicant is the primary copyright and/or related rights holder) or reliable information on the identification of the respective property rights holder and/or its location (place of residence).

26. The application for loss of the status shall be accompanied by:

a certificate of state registration of copyright in a work or a decision on registration of an contract concerning property rights in a work (if any);

documents and/or information certifying the identity and/or location of the copyright holder and/or the related rights holder in the work, phonogram, videogram and performances recorded therein, recorded into the Register, in respect of which the application for loss of the status is submitted;

a document confirming the powers of the representative (if the application for loss of the status is submitted by a representative of the copyright and/or related rights holder), which shall meet the requirements of paragraph 13 of this Procedure.

27. The application for loss of the status shall be drawn up and submitted to the National Intellectual Property Authority in accordance with the requirements specified in paragraphs 12-14 of this Procedure.

28. The applicant shall be responsible for the accuracy of the information provided in the application for loss of the status and the documents attached thereto. In case of reasonable doubts as to the accuracy of the said information, the National Intellectual Property Authority may send a request to the applicant to provide evidence confirming the said information.

29. The applicant shall have the right to withdraw the submitted application for loss of the status at any stage of its consideration until the National Intellectual Property Authority makes a decision on recording the data on the loss of the status of a work, phonogram, videogram and performances recorded therein into the Register.

30. The National Intellectual Property Authority shall consider the application for loss of the status and the documents attached thereto for compliance with the requirements specified in paragraphs 23-27 of this Procedure within one month from the date of receipt. In case of non-compliance of the application for loss of the status and the documents attached thereto with the said requirements, the National Intellectual Property Authority shall notify the applicant thereof in writing.

If within one month from the date of receipt of the notice of the need to eliminate deficiencies the National Intellectual Property Authority does not receive from the applicant the missing and/or properly executed documents, the application for loss of the status shall be left without consideration, and the applicant shall be notified thereof in writing. The applicant may re-file the application for loss of the status in compliance with the requirements of paragraphs 23-27 of this Procedure.

In case of return of a postal item with documents that were not received by the applicant for reasons beyond the control of the National Intellectual Property Authority, it shall be considered that such documents were properly delivered to the addressee. The date of receipt of such postal item by the applicant is considered to be the date when the postal notification was marked with the reasons for non-delivery of the item.

31. Within five business days from the date of receipt of a properly executed application for loss of the status, the National Intellectual Property Authority shall notify the institution in writing of its receipt.

The institution shall have the right to submit reasonable objections to the application for loss of the status within one month from the date of receipt of the notification of the National Intellectual Property Authority.

32. The National Intellectual Property Authority shall consider the application for loss of the status and the documents attached thereto within a period not exceeding 60 calendar days from the date of receipt of the application for loss of the status by the National Intellectual Property Authority.

Based on the results of consideration of the application for loss of the status and the documents attached thereto, the National Intellectual Property Authority shall decide to record into the Register the data on loss of the status of orphan work, phonogram, videogram and performances recorded therein or to refuse to record the said data into the Register.

The National Intellectual Property Authority shall decide to refuse to record the data on loss of the status of orphan work, phonogram, videogram and the performances recorded therein into the Register, if the submitted application for loss of the status and the documents attached do not meet the requirements of this Procedure.

33. In the decision on recording in the Register the data on loss of the status of orphan work, phonogram, videogram and the performances recorded therein, the National Intellectual Property Authority shall indicate the information that is the basis for recognising the object as having lost the status of an orphan, in accordance with the list of register data specified in paragraph 37 of this Procedure.

The form of the decision on recording into the Register the data on loss of the status of orphan work, phonogram, videogram and performances recorded therein, as well as the form of the decision on refusal to record such data into the Register shall be approved by the National Intellectual Property Authority.

The National Intellectual Property Authority shall send a certified copy of the decision to the correspondence address of the institution and the applicant within five working days from the date of making the decision.

34. The National Intellectual Property Authority shall within 10 working days from the date of making the decision on recording into the Register the data on loss of the status of orphan work, phonogram, videogram and performances recorded therein record into the Register the data specified in the decision.

After recording the data into the Register, the National Intellectual Property Authority shall publish such data on its official website and in the bulletin free of charge.

35. A work, phonogram, videogram and performances recorded therein shall lose the status of an orphan from the date of recording of the data on loss of the status of an orphan by the object into the Register by the National Intellectual Property Authority.

36. The National Intellectual Property Authority is the holder and administrator of the Register.

The creators of the register information and registrars are employees of the National Intellectual Property Authority.

The objects of the Register shall be the data on works, phonograms, videograms and performances recorded therein, which have the status of orphan or have lost such status. The register information shall include the data on the objects of the register - the register data specified in paragraph 37 of this Procedure.

The sources of information in the Register are the application for acquisition of the status and the documents attached thereto, the application for loss of the status, as well as the court decision.

37. The following data shall be recorded into the Register:

the serial number of a work, phonogram, videogram and performances recorded therein that have acquired the status of an orphan;

the date of record into the Register of the data on the acquisition of the status of orphan by a work, phonogram, videogram and performances recorded therein;

the date of publication on the official website of the National Intellectual Property Authority of the data on acquisition of the status of orphan work, phonogram, videogram and performances recorded therein;

the date of submission by the institution of the application for acquisition of the status to the National Intellectual Property Authority;

type of copyright and/or related rights object(s) in respect of which the application for acquisition of the status is submitted, their names and information on their publication in Ukraine;

information about the institution: full name of the legal entity, code according to the EDRPOU, location, address for correspondence;

a list of sources used by the institution to conduct thorough searches, indicating the dates of requests and responses to each of the sources or information about the lack of a response to the request;

date and number of the bulletin in which the search announcement is published;

the date of publication of the search announcement on the official website of the National Intellectual Property Authority;

the date of submission by the copyright holder and/or related rights holder the application for loss of the status to the National Intellectual Property Authority;

information about the applicant: surname, first name, patronymic (if any), registration number of the taxpayer's account card or series (if any) and passport number (for an individual who, due to his/her religious beliefs, has refused to accept the taxpayer's account card and has notified the relevant supervisory authority and has a mark in the passport), details of the foreigner's passport document or a document certifying a stateless person, a unique record number in the Unified State Demographic Register (if any) and/or the full name of the legal entity, code according to the EDRPOU or registration number in a foreign country (for non-residents), location, address for correspondence;

the date of recording in the Register of the data on loss of the status of orphan work, phonogram, videogram and performances recorded therein;

the date of publication on the official website of the National Intellectual Property Authority of the data on loss of the status of orphan work, phonogram, videogram and performances recorded therein.

38. The National Intellectual Property Authority in the process of maintaining the Register may make amendments to it on the basis of the application of the institution, the application of the applicant and a court decision.

39. An application for amendments to the Register shall be submitted to the National Intellectual Property Authority in accordance with the requirements set forth in paragraphs 12-14 of this Procedure.

40. The National Intellectual Property Authority shall record the data in the Register, exclude the data from it, amend the data contained in the Register free of charge.

41. Any person shall have the right to apply for a confirmation from the Register. The National Intellectual Property Authority shall determine the content of the data and the procedure for providing a confirmation from the Register. The confirmation in the form of an electronic document

shall be provided free of charge within 15 working days from the date of receipt by the National Intellectual Property Authority of the request in compliance with the requirements of the Law of Ukraine 'On Personal Data Protection'.

42. The National Intellectual Property Authority shall provide open, 24-hour and free access to the data of the Register by posting it on its official website, except for such information about the applicant as registration number of the taxpayer's account card or series, passport series and number, details of the foreigner's passport document, details of the document certifying a stateless person, a unique record number in the Unified State Demographic Register, and address for correspondence.

The data contained in the Register may be used by any individual/legal entity, state authorities and local government bodies.

43. Measures related to the establishment, maintenance, functioning and administration of the Register, software, technical and technological support, storage and protection of the Register data shall be carried out by the National Intellectual Property Authority at the expense of revenues from fees for actions related to the protection of intellectual property rights, as well as at the expense of funds from other sources not prohibited by law, in compliance with the requirements of the Laws of Ukraine 'On Protection of Information in Information and Communication Systems' and 'On the Protection of Intellectual Property Rights'.

44. The Registry, its software and property rights thereto are owned by the state acting through the National Intellectual Property Authority, which is a legal entity of public law determined by law.

45. The Register shall be maintained in the state language in electronic form.

46. The electronic information interaction of the Register with other state electronic information resources shall be carried out using the application software interface of the National Intellectual Property Authority, which ensures interaction (data exchange) with the Trembita system of electronic interaction of state electronic information resources.

47. The Register shall start functioning from the date of entry into force of this Procedure.

48. A qualified electronic signature shall be used for electronic documents issued by the National Intellectual Property Authority with regard to the maintenance of the Register.

For electronic documents received by the National Intellectual Property Authority with regard to the maintenance of the Register, an electronic signature based on a qualified public key certificate shall be used.

49. On the territory of Ukraine, institutions shall be allowed to non-commercial use of the orphan works, phonograms, videograms and performances recorded therein included in the Register by means of reproduction methods solely for the purpose of their digitisation, indexing, cataloguing, preservation or restoration of a copy without their further publication.

50. A copy of the relevant work, phonogram, videogram and performance recorded therein shall be accompanied by information that such object has the status of an orphan, indicating the date of acquisition of such status.

51. Once the data on the loss of the status of orphan works, phonograms, videograms and performances recorded therein are recorded in the Register, any individual/legal entity shall be obliged to terminate the permitted use of the respective object as an orphan provided for in paragraph 49 of this Procedure.

52. Disputes on the acquisition and loss of the status of orphan work, phonogram, videogram and performances recorded therein, and on the maintenance of the Register shall be settled in court.