



STATUTORY INSTRUMENTS.

S.I. No. 490 of 2014



EUROPEAN UNION (CERTAIN PERMITTED USES OF ORPHAN
WORKS) REGULATIONS 2014

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The Minister for Jobs, Enterprise and Innovation, in exercise of the powers conferred on him by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012¹, hereby makes the following regulations:

Part 1

PRELIMINARY AND GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the European Union (Certain Permitted Uses of Orphan Works) Regulations 2014.

(2) These Regulations come into operation on 29 October 2014.

Interpretation

2. (1) In these Regulations—

“Act of 2000” means the Copyright and Related Rights Act 2000 (No. 28 of 2000);

“Controller” has the meaning assigned to it by the Act of 2000;

“Directive” means Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012¹ on certain permitted uses of orphan works;

“orphan work” shall be construed in accordance with Regulation 4(1).

“relevant body” means—

- (a) a publicly accessible library,
- (b) an educational establishment,
- (c) a museum,
- (d) an archive,
- (e) a film or audio heritage institution, or
- (f) a public service broadcaster;

¹OJ No. L. 299, 27.10.2012, p. 5

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 31st October, 2014.

“relevant work” shall be construed in accordance with Regulation 3;

“right holder” means—

- (a) copyright owner within the meaning of the Act of 2000 where the rights concerned are rights under Part II of the Act of 2000,
- (b) a rights owner of a right conferred by Part III of the Act of 2000 where the rights concerned are rights under Part III of the Act of 2000, or
- (c) an exclusive licensee—
 - (i) referred to in section 122 of the Act of 2000 where the rights concerned are rights under Part II of that Act, or
 - (ii) referred to in section 295 of the Act of 2000 where the rights concerned are rights under Part III of the Act of 2000;

“sound recording” has the meaning assigned to it by the Act of 2000;

“public service broadcaster” has the meaning assigned to it by the Broadcasting Act 2009 (No. 18 of 2009).

(2) A work or expression that is used in these Regulations and that is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Part 2

CERTAIN PERMITTED USES BY RELEVANT BODY OF ORPHAN WORKS

Relevant work

3. (1) In these Regulations, “relevant work” means a work, specified in paragraphs (2), (3) and (4), to which these Regulations apply and “relevant work” shall be construed accordingly.

(2) For the purposes of paragraph (1), these Regulations apply to a work which is—

- (a) a work which is published in the form of a book, journal, newspaper, magazine or other writing 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) a cinematographic or audiovisual work or a sound recording in the collections of publicly accessible libraries, educational establishments or museums and in the collections of archives or of film or audio heritage institutions, or

- (c) a cinematographic or audiovisual work or a sound recording produced by public service broadcasting organisations up to and including 31 December 2002 and contained in their archives,

and which is protected by copyright or related rights and has been first published in a Member State or, in the absence of publication, first broadcast in a Member State.

(3) In addition to the works specified in paragraph (2), these Regulations apply to a work or sound recording referred to in paragraph (2) where—

- (a) that work or sound recording has never been published or broadcast, but has been made publicly accessible by a relevant body in a Member State, with the consent of the rightholders in that work or sound recording, and
- (b) it is reasonable to assume that the rightholders in that work or sound recording would not oppose the uses referred to in Regulation 8.

(4) In addition to the works and sound recordings referred to in paragraphs (2) and (3), these Regulations apply to a work or other protected subject-matter that is embedded or incorporated in, or constitutes an integral part of, a work or sound recording referred to in paragraphs (2) and (3).

Orphan works

4. (1) Where, in relation to a relevant work—

- (a) there is one rightholder and the rightholder has not been identified,
- (b) there is more than one rightholder and none of the rightholders has been identified,
- (c) there is a single rightholder who has been identified but has not been located despite a diligent search, referred to in Regulation 5, having been carried out, and recorded, in accordance with that Regulation, or
- (d) there is more than one rightholder and one or more of them has been identified but none of those identified have been located despite a diligent search, referred to in Regulation 5, having been carried out, and recorded, in accordance with that Regulation,

the relevant work shall be considered to be an orphan work.

(2) This paragraph applies to a relevant work where there is more than one rightholder in the relevant work and one, or more, of those rightholders—

- (a) has not been identified, or
- (b) if identified, has not been located,

after a diligent search, referred to in Regulation 5, has been carried out, and recorded, in accordance with that Regulation.

(3) A relevant work to which paragraph (2) applies may be used by a relevant body in accordance with these Regulations if a rightholder in the relevant work who has been identified and located has, in relation to the rights that such rightholder holds in the relevant work, authorised the relevant body to carry out the acts of reproduction, within the meaning of Article 2 of Directive 2001/29/EC² and making available to the public referred to in Article 3 of Directive 2001/29/EC².

(4) Paragraphs (2) and (3) are without prejudice to the rights in the relevant work of a rightholder who has been identified and located.

(5) In the case of a relevant work to which paragraph (2) applies, a rightholder who has not been identified or located may, at any time, claim his or her rights in that relevant work.

(6) These Regulations are without prejudice to sections 24(2), 24(3), 32(1), 32(2), 32(3), 88, 92, 183(5)(c), 197, 245 and 337 of the Act of 2000.

Diligent search

5. (1) For the purposes of establishing whether a relevant work is an orphan work, a relevant body shall, prior to using the relevant work, ensure that a diligent search is carried out in good faith in respect of the relevant work, by consulting—

- (a) the database established and managed by the Office for Harmonization in the Internal Market in accordance with Regulation (EU) No. 386/2012³,
- (b) the appropriate sources relevant to the category of relevant work as specified in the Schedule, and
- (c) if there is evidence to suggest that relevant information on rightholders is to be found in other countries, sources of information available in those other countries.

(2) A diligent search shall be carried out—

- (a) subject to subparagraph (b), in the Member State where the relevant work was first published or, in the absence of publication, first broadcast,
- (b) in the case of a cinematographic or audiovisual work, if the producer of the relevant work has his or her headquarters or habitual residence in a Member State, such diligent search shall be carried out in the Member State in which such headquarters is situated or in which he or she is habitually resident, or
- (c) where the relevant work has not been published or broadcast but has been made publicly accessible by the relevant body with the consent

²OJ No. L167, 22.6.2001, p.16.

³OJ. No. L. 129, 16.5.2012, p.1.

of the rightholders, in the Member State in which the relevant body that made the work publicly accessible, with the consent of the rightholder, is established.

(3) A relevant body shall maintain a record of each diligent search it carries out and shall provide the following information to the Controller:

- (a) the results of the diligent searches which the relevant body has carried out and which have led to the conclusion that the relevant work is considered to be an orphan work;
- (b) the use that the relevant body makes of the orphan work concerned;
- (c) any change, pursuant to Regulation 7, of the orphan work status of any relevant work used by the relevant body; and
- (d) the relevant contact information of the relevant body.

(4) The Controller shall, upon receipt of information from a relevant body under paragraph (3), forward that information as soon as practicable to the Office for Harmonization in the Internal Market in order for the recording of that information on the online database established and managed by that Office in accordance with Regulation (EU) No. 386/20123.

Mutual recognition of orphan work status

6. (1) Where under the law of another Member State, a relevant work which is considered, pursuant to Article 2 of the Directive, to be an orphan work in that other Member State, that relevant work shall be considered to be an orphan work in the State and may be used and accessed in the State in accordance with these Regulations.

(2) Where under the law of another Member State, a relevant work to which Regulation 4(2) applies, is used, pursuant to Article 2(2) of the Directive, under the law of that Member State, in accordance with that Article, that relevant work may be used and accessed in the State in accordance with Regulation 4(3) and Regulation 9 in so far as the rights of the rightholders who have not been identified or not located are concerned.

End of orphan work status

7. A rightholder in a relevant work that is considered to be an orphan work may, at any time, put an end to the orphan work status of the relevant work in so far as his or her rights are concerned.

Certain permitted uses of orphan works

8. (1) Subject to paragraphs (3) to (5), a relevant body does not infringe the copyright in a relevant work which is an orphan work contained in its collection by—

- (a) making the orphan work available to the public within the meaning of Article 3 of Directive 2001/29/EC², or

- (b) an act of reproduction, within the meaning of Article 2 of Directive 2001/29/EC², of the orphan work, for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(2) Subject to subsections (3) and (5), a relevant body does not infringe the rights conferred by Part III of the Act of 2000 in a relevant work which is an orphan work contained in its collection by—

- (a) making the orphan work available to the public within the meaning of Article 3 of Directive 2001/29/EC², or
- (b) an act of reproduction, within the meaning of Article 2 of Directive 2001/29/EC², of the orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(3) A relevant body shall use an orphan work in accordance with paragraphs (1) and (2) only in order to achieve aims related to its public interest mission, and in particular in relation to the preservation of, the restoration of and the provision of, cultural and educational access to, relevant works contained in its collection.

(4) A relevant body may, in the course of the use of an orphan work in accordance with paragraphs (1), (2) and (3), generate revenues in the course of such use for the sole purpose of covering the costs incurred by it in digitising the orphan work concerned and making it available to the public.

(5) In the use of an orphan work in accordance with paragraphs (1), (2) and (3), a relevant body shall indicate the name of identified authors and other rightholders in the orphan work.

Certain permitted uses of relevant works to which Regulation 4(2) applies

9. (1) Where, in respect of a relevant work to which Regulation 4(2) applies, a relevant body has been authorised by a rightholder referred to in Regulation 4(3) to carry out the acts referred to in that Regulation, subject to paragraphs (3) to (5), that relevant body does not infringe the copyright in that relevant work contained in its collection by—

- (a) making that relevant work available to the public within the meaning of Article 3 of Directive 2001/29/EC², or
- (b) an act of reproduction, within the meaning of Article 2 of Directive 2001/29/EC², of that relevant work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(2) Where, in respect of a relevant work to which Regulation 4(2) applies, a relevant body has been authorised by a rightholder referred to in Regulation 4(3) to carry out the acts referred to in that Regulation, subject to paragraphs (3) to (5), that relevant body does not infringe the rights conferred by Part III of the Act of 2000 in that relevant work, contained in its collection, by-

- (a) making that relevant work available to the public within the meaning of Article 3 of Directive 2001/29/EC², or
 - (b) an act of reproduction, within the meaning of Article 2 of Directive 2001/29/EC², of that relevant work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.
- (3) A relevant body shall use a relevant work—
- (a) referred to in paragraph (1), in accordance with that paragraph, and
 - (b) referred to in paragraph (2), in accordance with that paragraph,

only in order to achieve aims related to its public interest mission, and in particular in relation to the preservation of, the restoration of and the provision of, cultural and educational access to, relevant works contained in its collection.

(4) A relevant body may, in respect of a relevant work referred to in paragraphs (1) and (2), in the course of the use of that relevant work that is carried out in accordance with those paragraphs and paragraph (3), generate revenues in the course of such use for the sole purpose of covering the costs incurred by it in digitising the relevant work concerned and making it available to the public.

(5) In the use of a relevant work referred to in paragraphs (1) and (2) that is carried out in accordance with those paragraphs and paragraph (3), a relevant body shall indicate the name of identified authors and other rightholders in that relevant work.

Regulations 8 and 9: supplemental provisions

10. These Regulations are without prejudice to the freedom of contract of relevant bodies in pursuit of their public interest missions particularly in respect of public-private partnership agreements.

Fair compensation

11. (1) Where a rightholder puts an end to the orphan work status of a relevant work, fair compensation is due to that rightholder for the use under Regulation 8 (1) or 8(2) that has been made, by a relevant body, of the orphan work concerned.

(2) Where, in the case of a relevant work to which Regulation 4(2) applies, a rightholder who—

- (a) was unidentified or if identified not located at the time of a relevant body, in accordance with these Regulations, used the relevant work, and
- (b) has, subsequent to that use claimed his or her rights in the relevant work,

fair compensation is due to that rightholder for the use under Regulation 9(1) or 9(2) that has been made, by the relevant body, of the relevant work to which Regulation 4(2) applies.

(3) Where, pursuant to paragraph (1) or (2), fair compensation is due to a rightholder, the amount, if any, of such fair compensation shall be paid by the relevant body who used the relevant work.

(4) Where the relevant body and the rightholder cannot agree an amount of fair compensation due to a rightholder pursuant to paragraph (1) or (2), either party may refer the matter to the Controller for determination of the amount of such fair compensation for the use made by the relevant body, in accordance with Regulation 8 of the orphan work concerned or, as the case may be, a relevant work referred to in Regulation 9.

(5) Where a reference is made under paragraph (4), the Controller shall, when determining the amount of fair compensation, have regard to the use of the orphan work made, in accordance with the requirements of Regulation 8 by the relevant body concerned or, in the case of a relevant work referred to in Regulation 9, the use of the relevant work referred to in, and made in accordance with, that Regulation by the relevant body and make an order as to the amount of fair compensation payable to the rightholder in respect of such use as the Controller considers to be reasonable.

(6) Without prejudice to the generality of paragraph (5), when considering a reference under paragraph (4) and the amount, if any, of fair compensation to be paid pursuant to this Regulation, the matters the Controller shall have regard to include—

- (a) the use, permitted under Regulation 8, of the orphan work made by the relevant body or, in the case of a relevant work referred to in Regulation 9, the use permitted under, and made in accordance with, that Regulation,
- (b) the cultural promotion objectives of the State,
- (c) the non-commercial nature of the use made by the relevant body in order to achieve aims related to its public-interest mission including promoting learning and disseminating culture, and
- (d) the possible harm to the rightholder concerned.

Amendment of Act of 2000

12. The Act of 2000 is amended—

- (a) in Part II, by the insertion of the following after section 70:

“Orphan works

70A. (1) The copyright in a relevant work in the collection of a relevant body is not infringed by a relevant body where-

- (a) the relevant work is an orphan work within the meaning of Regulation 4 of the Regulations of 2014, and
- (b) in accordance with Regulation 8 of the Regulations of 2014, the relevant body—
 - (i) makes that orphan work available to the public, or
 - (ii) carries out an act of reproduction of that orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(2) The copyright in a relevant work in the collection of a relevant body is not infringed by a relevant body where—

- (a) the relevant work is a relevant work to which Regulation 4(2) of the Regulations of 2014 applies,
- (b) the relevant body has, pursuant to Regulation 4(3) of the Regulations of 2014, been given an authorisation referred to in that Regulation, and
- (c) in accordance with Regulation 9 of the Regulations of 2014, the relevant body—
 - (i) makes that orphan work available to the public, or
 - (ii) carries out an act of reproduction of that orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(3) In this section—

‘Regulations of 2014’ means the European Communities (Certain Permitted Uses of Orphan Works) Regulations 2014;

‘relevant body’ has the meaning assigned to it by the Regulations of 2014;

‘relevant work’ has the meaning assigned to it by the Regulations of 2014.”,

(b) in Part III, by the insertion of the following after section 236:

“Orphan works

236A. (1) The rights conferred by this Part in relation to a relevant work in the collection of a relevant body are not infringed by a relevant body where—

- (a) the relevant work is an orphan work within the meaning of Regulation 4 of the Regulations of 2014, and

(b) in accordance with Regulation 8 of the Regulations of 2014, the relevant body—

(i) makes that orphan work available to the public, or

(ii) carries out acts of reproduction of that orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(2) The rights conferred by this Part in relation to a relevant work in the collection of a relevant body are not infringed by a relevant body where—

(a) the relevant work is a work to which Regulation 4(2) of the Regulations of 2014 applies,

(b) the relevant body has, pursuant to Regulation 4(3) of those Regulations, been given an authorisation referred to in that Regulation, and

(c) in accordance with Regulation 9 the Regulations of 2014, the relevant body—

(i) makes that orphan work available to the public, or

(ii) carries out acts of reproduction of that orphan work for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

(3) In this section—

‘Regulations of 2014’ has the meaning assigned to it by section 70A;

‘relevant body’ has the meaning assigned to it by section 70A;

‘relevant work’ has the meaning assigned to it by section 70A.”,

and

(c) in section 254, by inserting the following subsection after subsection (5):

“(6) This section shall not apply to a recording of a performance that is a relevant work within the meaning of the Regulations of 2014 and the relevant work is an orphan work within the meaning of those Regulations.

(7) In subsection (6)—

‘Regulations of 2014’ has the meaning assigned to it by section 70A;

‘relevant work’ has the meaning assigned to it by section 70A.”.

Miscellaneous provisions in relation to Part 2

13. These Regulations are without prejudice to—

- (a) any arrangements concerning management of rights pursuant to the Act of 2000,
- (b) the provisions specified in Article 7 of the Directive, and
- (c) any acts concluded and rights acquired before 29 October 2014.

Part 3

REFERENCE TO CONTROLLER UNDER REGULATION 11(4)

Reference under Regulation 11(4): proceedings before Controller

14. (1) A rightholder or relevant body who makes a reference under Regulation 11(4) (in this Regulation referred to as a “petitioner”) shall furnish to the Controller an original and one copy of a signed statement (in this Regulation referred to as a “statement of case”) setting out the following information and the Controller shall not, subject to paragraph (2), consider a reference as having been made to him or her unless he or she is duly furnished with a statement of case in accordance with this paragraph:

- (a) the name and address of the petitioner;
- (b) the name and address of the respondent;
- (c) the material facts on which the petitioner relies in making the reference;
- (d) details of the orphan work to which the reference refers or, in the case of a relevant work to which Regulation 4(2) applies, details of such work in respect of which the reference is made;
- (e) details of the use made, by the relevant body concerned, of that orphan work in accordance with Regulation 8(1) or 8(2) or, as the case may be, the relevant work referred to in Regulation 9 and the use of such work in accordance with that Regulation;
- (f) the period of time during which the use of the orphan work or the relevant work referred to in Regulation 9, was made by the relevant body concerned;
- (g) details of any offer of fair compensation made by the relevant body concerned in respect of that use;
- (h) the date on which the rightholder concerned put an end to the orphan work status of the relevant work concerned, or, in the case of a relevant work to which Regulation 4(2) applies, claimed his or her rights in the relevant work concerned;
- (i) the amount of fair compensation sought.

(2) Where the Controller considers that a statement of case furnished to him or her does not comply with all or any of the requirements referred to in paragraph (1), he or she may, having regard to the extent of the failure to comply with those requirements, by notice in writing—

- (a) inform the petitioner of such failure of compliance and that the reference cannot be considered by the Controller, or
- (b) require the petitioner, within such period as may be specified in the notice, to take such steps or to furnish such further information, as may be necessary to comply with those requirements and, where the applicant fails to comply with a requirement under this subparagraph, the Controller shall inform the petitioner, by notice in writing, of such failure and that the reference cannot be considered by the Controller.

(3) As soon as may be following receipt of a statement of case, the Controller shall furnish a copy of the original statement of case to the respondent.

(4) A respondent who wishes to contest a petitioner's reference shall, within 28 days of receipt of the copy statement of case, furnish to the Controller a statement (in this Regulation referred to as a "counter statement") replying to the statement of case and setting out the extent to which the statement of case is admitted or disputed together with a copy of such counter statement.

(5) As soon as may be following receipt by the Controller of a counter statement, he or she shall furnish a copy of the counter statement to the petitioner.

(6) Where a respondent fails to furnish a counter statement within the period referred to in paragraph (4), the Controller shall by notice in writing inform the respondent of such failure and that unless a counter statement is furnished within such further period as may be specified in the notice the Controller shall be entitled to presume that the respondent does not intend participating in the reference and the Controller shall proceed to consider and determine the reference under Regulation 11(4) in the absence of the counter statement.

(7) Unless the Controller otherwise directs, where a respondent fails to furnish a counter statement within the period specified in a notice under paragraph (6), the Controller shall be entitled to presume that the respondent does not intend participating in the reference and the Controller shall proceed to consider and determine the reference under Regulation 11(4) in the absence of the counter statement.

(8) Where, having considered the statement and other information furnished by the petitioner or respondent, the Controller is of the opinion that, having regard to the circumstances he or she may reasonably require additional information, the Controller may request by notice in writing that—

- (a) the following be furnished to him or her by the petitioner or respondent within the period of time referred to in the notice—

(i) further statements or counter statements, and

(ii) books or other documents,

and

(b) the relevant work to which the reference refers be furnished to him or her or, where appropriate, having regard to the relevant work concerned, access to the relevant work to which the reference refers be made available to the Controller, within the period of time referred to in the notice.

(9) Where the Controller makes a request under paragraph (8), the petitioner or respondent to whom the request is made shall comply with the request within the period of time referred to in the notice.

(10) Unless the Controller otherwise directs, where a petitioner or respondent fails to comply with a request made under paragraph (8) within the period referred to in the notice, the Controller shall be entitled to presume that the petitioner or respondent, as the case may be, does not intend to furnish the items or provide the access specified in the request and the Controller shall proceed to hear and determine the reference in the absence of the items specified in the request or without having had the access specified in the request.

(11) A person (in this Regulation referred to as an “applicant”) who is not a petitioner or respondent may apply to the Controller to be made a party to the proceedings under this Regulation and shall furnish the following to the Controller—

(a) the name and address of the applicant,

(b) the name of the relevant proceedings and the relevant work which is the subject matter of the proceedings, and

(c) an original and 2 copies of a statement to the Controller which sets out the material facts relied upon in claiming that the applicant has a substantial interest in the matter the subject matter of the proceedings in respect of which the application is made, and the reasons why he, she or they should be made a party to the proceedings.

(12) Where the Controller receives an application from an applicant he or she shall notify the petitioner and the respondent to the proceedings and furnish a copy of the statement furnished pursuant to paragraph (11)(c) to them.

(13) The petitioner or respondent, as the case may be, if they wish to object to the applicant becoming a party to the proceedings, having considered the statement furnished to them under paragraph (12) shall within 14 days of the statement being so furnished notify the Controller of their objection, and in so notifying the Controller shall furnish a statement outlining the reasons for their objection to the Controller together with a copy of such statement.

(14) Where the Controller is not furnished with an objection pursuant to paragraph (13) within the period specified in that paragraph, the Controller shall be entitled to presume that the person to whom the statement was furnished under paragraph (12) does not so object and the Controller shall proceed with the determination of the reference under Regulation 11(4) accordingly.

(15) The Controller having considered the statement furnished pursuant to paragraph (11)(c) and any objection furnished pursuant to paragraph (13), may, if he or she is satisfied to do so, decide to make the applicant a party to the proceedings.

(16) The Controller shall make his or her determination in relation to a reference under Regulation 11(4) in a timely manner and shall inform the petitioner or respondent or, if appropriate a person who has been made a party to the proceedings pursuant to paragraph (15), by notice in writing of his or her determination and the reasons for that determination.

(17) A petitioner, respondent, or applicant shall furnish an address for service in a Member State of the European Economic Area to the Controller.

(18) An application, reference or communication, to the Controller under this Regulation may be made by an agent or a legal representative who resides or has a place of business in the State or in a Member State of the European Economic Area other than the State and is duly authorised by the petitioner, respondent or person or organisation on whose behalf the application, reference or communication is made, and where a document relating to any such application, reference or communication is served upon or addressed to an agent or legal representative authorised as aforesaid, the document shall be deemed to be served upon or addressed to the person by whom he or she is so authorised.

(19) A notice or other document that is required to be served or given under this Regulation and Regulation 15 shall be addressed to the person concerned by name and may be served on or given to the person in one of the following ways:

- (a) by delivering it to the person;
- (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
- (c) by sending it by post in a prepaid letter to the address at which the person ordinarily resides or, in a case for which an address for service has been furnished, to that address;
- (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.

(20) For the purposes of paragraph (19), a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body or person, including a partnership shall be deemed to be ordinarily resident at its principal office or place of business.

(21) In this Regulation, “respondent” means—

(a) in the case of a reference made under Regulation 11(4) by a right-holder, the relevant body by whom compensation is payable under Regulation 11(3), or

(b) in the case of a reference made under Regulation 11(4) by a relevant body, a rightholder to whom compensation is payable under Regulation 11(3).

Appeal to High Court

15. (1) A party to proceedings before the Controller under Regulation 14 may, not later than 4 weeks from the date of the service of the notice of the determination of the Controller in those proceedings on that party, appeal to the High Court from that determination.

(2) The party who makes the appeal under paragraph (1) of the determination of the Controller shall so notify the Controller as soon as may be after the appeal is brought and furnish the Controller with a copy of the appeal.

(3) On receipt of a notice under paragraph (2), the Controller shall suspend the operation of any order made by him or her under Regulation 11(5) which gives effect to the determination being appealed.

(4) The Controller shall inform the persons directly affected by the order concerned by notice in writing of the suspension of the operation of the order.

(5) By leave of the High Court, an appeal from a decision of the High Court under this Regulation shall lie to the Court of Appeal on a question of law.

(6) In any proceedings before any court pursuant to this Regulation, the Controller shall not be awarded or be ordered to pay costs.

Schedule

Sources to be searched during diligent search

Regulation 5(1)(b)

The sources referred to in Regulation 5(1)(b) are set out below in column (3) in relation to the category of relevant work concerned set out below in column (2).

No. (1)	Category of relevant work (2)	Sources (3)
1.	Published 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 collecting societies, 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.	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 collecting societies including reproduction rights organisations;
3.	Visual works, including fine art, photography, illustration, design, architecture, sketches of the latter works and other such works 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 collecting societies, in particular for visual arts, and including reproduction rights organisations; (c) the databases of picture agencies, where applicable;

No. (1)	Category of relevant work (2)	Sources (3)
4.	Audiovisual works and sound recordings	(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 sound recordings; (e) the databases of the relevant collecting societies, in particular for authors, performers, sound recording 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.
5.	Relevant works which have not been published or broadcast	Those sources that are listed for numbers 1 to 4 above which are appropriate to a relevant work which is unpublished or not broadcast.



GIVEN under the Official Seal of the Minister for Jobs, Enterprise
and Innovation,
29 October 2014.

DERMOT CURRAN,

A Person Authorised Under Section 15 of the Ministers and
Secretaries Act 1924 to Authenticate the Seal of the
Minister for Jobs, Enterprise and Innovation.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Regulations transpose Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works. In line with the Directive, the Regulations apply to publicly accessible libraries, educational establishments, museums, archives, film or audio heritage institutions and public service broadcasters (up to 31 December 2002). The Regulations provide for an exception to copyright law for these organisations in respect of categories of works first published in the EU that are still protected by copyright but whose authors or other right holders cannot be identified and located. The categories of works are: works in the print sector (books, journals, magazines and newspapers), cinematographic and audio-visual works, sound recordings and works embedded or incorporated in other works or sound recordings (e.g. pictures in a book). The exception to copyright law will allow these cultural organisations to digitise orphan works and make them publicly available on-line in all EU Member States. The Directive also applies to unpublished works (such as letters, manuscripts, etc.) under certain conditions.

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