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# Legal Bulletin



## Intellectual Property

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1. Transposition of Directive 2012/28/EU on certain permitted uses of orphan works

### Legal status applicable to orphan works

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Law No. 210/2015 supplementing Law No. 8/1996 on copyrights and related rights (“Law No. 210/2015”) was published in the Official Gazette of Romania, Part I, No. 550 of 24 July 2015 and entered into force on 27 July 2015. This law transposes the provisions of Directive 2012/28/EU on certain permitted uses of orphan works<sup>1</sup>.

Thus, Law No. 8/1996 was supplemented with specific provisions regulating the legal status applicable to orphan works<sup>2</sup>. The main legislative amendments / additions are:

#### 1. Notion of orphan works

The concept of “orphan work” applying to all types of intellectual creations in the literary, artistic or scientific field was introduced (e.g., musical compositions with or without words, dramaturgic works, dramaturgic and musical works, choreographic works and pantomimes, cinematographic works, and any other audiovisual works, architectural works, including layouts, scale models and graphic works included in the architectural projects, translations, adaptations, anthologies of literary and artistic works, etc.)<sup>3</sup>. Furthermore, the applicability of this concept is also recognised to certain categories of works protected by copyrights and published or disseminated for the first time in a Member State (e.g., works 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).

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1 Directive 2012/28/EU of the European Parliament and of the Council of the European Union on certain permitted uses of orphan works, published in the Official Journal under number 299L dated 27 October 2012.

2 Law No. 8/1996 on copyrights and related rights was published in the Official Gazette of Romania, Part I, No. 60 of 26 March 1996.

3 These are the works listed in Articles 7, 8 and 103 of Law No. 8/1996.

Orphan work refers to the intellectual creative work, of the categories mentioned above, in relation to which none of the rightholder has been identified or located, although a diligent search has been carried out in accordance with the requirements imposed by the new legal framework, and the entities responsible for such performance maintained records of said diligent searches and complied with the standards imposed by the new legislation.

The orphan works that have been considered as such in another Member State shall be considered as having the same status on the territory of Romania.

The orphan work status does not apply to anonymous works or to works created under a pseudonym.

## 2. Use of orphan works

The publicly accessible libraries, educational establishments, museums, archives, film or audio heritage institutions and public-service broadcasting organisations (the “**Authorised Entities**”) are entitled, under the law, to use the orphan works provided that such use is exclusively made for the purpose of achieving aims related to their public-interest missions. They may use the works by making them available to the public, and by acts of reproduction for the purposes of digitisation, making available, indexing, cataloguing, preservation or restoration.

When a work has several rightholders and not all of them are identified / located, the work may be used under the conditions applicable to orphan works (as described above) only with the approval of the identified and located rightholders.

## 3. Diligent search and maintaining records of the searches

As per Law No. 210/2015, the Authorised Entities are required to carry out a diligent search with the purpose of identifying / locating the copyright holders and to maintain records of such searches:

- **Search** - The Authorised Entities must carry out a diligent search, in good faith. The search must be carried out by consulting the appropriate sources for the category of works or phonograms. The sources to be used for carrying out the searches shall be determined, for each category of works, by the decision of the Managing Director of the Romanian Copyright Office (the “**RCO**”) as a result of consultations with the rightholders and the users of the works. Law No. 210/2015 provides, for certain categories of works, the types of sources to be considered throughout the searches;
- **Maintaining records of the searches** - The Authorised Entities must maintain records of the searches and provide the RCO with the following information: (i) the results of the performed searches; (ii) the use made of orphan works; (iii) any change of the orphan work status and (iv) their relevant contact information.

The RCO is required to take all the necessary measures so that the data received from the Authorised Entities as a result of the diligent searches are communicated to the Office for

Harmonisation in the Internal Market with the purpose of publishing the relevant information in the single database of orphan works<sup>4</sup>.

#### 4. Fair compensation owed to the copyright holders

The rightholder of an orphan work, who put an end to such status of the work, is entitled to a fair compensation for the use of the work by the Authorised Entities. The fair compensation shall be determined depending on the number of copies / reproductions of said work. The exercise of the right to a fair compensation owed to the rightholders is subject to the mandatory collective management.

*[sergiu.cretu@tuca.ro](mailto:sergiu.cretu@tuca.ro)*

*[florentina.hurdubei@tuca.ro](mailto:florentina.hurdubei@tuca.ro)*

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<sup>4</sup> The European database of orphan works can be consulted by accessing the following link:  
<https://oami.europa.eu/orphanworks>

## Editors

The **Intellectual Property** practice group at Țuca Zbârcea & Asociații consists of dedicated lawyers and certified intellectual property counsellors with a significant experience in advising leading national and multinational companies on the protection of their IP portfolios. An important part of our work in this area relates to complex anti-counterfeiting issues, including product contraband and illegal use of trademarks, especially in the mass market products industries such as cigarettes, beverages, food and clothing. In addition, our team has accrued extensive expertise in advising on franchising, as well as trademark and patent court protection in pharma and software industries. Our intellectual property experts are constantly providing support to high-profile privatisations and private equity deals, as well as complex business takeovers within insolvency procedures. The firm is an active member of INTA, WTO and ECTA organisations.



Ciprian Dragomir  
Partner  
+4 021 204 88 98  
ciprian.dragomir@tuca.ro



Bogdan Halcu  
Managing Associate  
+4 021 204 88 90  
bogdan.halcu@tuca.ro

### TUCA ZBARCEA ASOCIATII

Șos. Nicolae Titulescu nr. 4-8  
America House, Aripa de Vest, et. 8  
Sector 1, 011141, București, România  
T + 4 021 204 88 90  
F + 4 021 204 88 99  
E office@tuca.ro  
www.tuca.ro

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