

New German legislation on orphan and out-of-commerce works

A new law on the use of orphan and out-of-commerce works was passed on 01/10/2013 and entered into force on 01/01/2014. The new law:

1. Amends the Copyright Act (Urheberrechtsgesetz) by adding new sections (§ 61 to 61c) concerning orphan works, defined as published works, whose rightholders cannot be identified or located despite a diligent search. The new provisions implement the EU Directive 2012/28 on certain permitted uses of orphan works. They permit the digitization and making available to the public, on certain conditions, of qualifying works from the collections of publically accessible libraries, educational institutions, museums and archives
2. Amends the Administration of Copyright Act (Urheberrechtswahrnehmungsgesetzes) by adding a new § 13d and 13e, concerning out-of-commerce works, which were published before 01/01/1966. Provided the following conditions are met there is a legal presumption that a collecting society which administers the rights of reproduction and making available in relation to such out of commerce works, is entitled to also administer the rights of rightholders who have not expressly mandated it to do so:
 - the works are in the collections of the institutions mentioned in para 1 above;
 - the copying and making available do not serve commercial purposes;
 - the works are included in the Register of Out-of-Commerce Works to be maintained by the German Patent and Trademark Office (DPMA);
 - the rightholder(s) have not objected to the proposed rights administration within 6 weeks of the entry into the Register concerning the work in question

The provisions concerning out-of-commerce works closely follow the proposals of the German Literary Conference, and author, publisher, and library representatives, as well as the collecting societies VG WORT and VG Bild-Kunst. VG WORT is the only German collecting society currently administering rights in literary works, including out-of commerce works. VG Bild-Kunst similarly is the only collecting society administering the rights in image-based works. The new law will enable the large-scale digitization and making available of older works for non-commercial cultural and scientific purposes to be licensed and remunerated. According to legal opinion, the provisions extend only to works originally published in Germany, including translations of foreign works.

translation (unofficial) of the provisions for the out-of-commerce law:

https://www.vgwort.de/fileadmin/pdf/allgemeine_pdf/out_of_commerce_law_2013.pdf