
DRAFT STATUTORY INSTRUMENTS

2014 No.

**The Copyright and Rights in Performances
(Licensing of Orphan Works) Regulations 2014**

Diligent search

4.—(1) An orphan licensee shall, before applying for an orphan licence, carry out a diligent search or refer to an existing diligent search which is valid and, in either case, is appropriate to the orphan work which is the proposed subject matter of the orphan licence and relates to the rights in the relevant work which the orphan licensee proposes to use.

(2) A diligent search must comprise a reasonable search of the relevant sources to identify and locate the right holders of the relevant work.

(3) The sources that are relevant for the relevant work must, as a minimum, include—

- (a) the relevant register maintained by the authorising body and the relevant databases maintained by the Office for Harmonization in the Internal Market; and
- (b) where there is no record that the relevant work is an orphan work in the register or databases referred to in paragraph (a), any relevant sources listed for that category of work in Part 2 of Schedule ZA1 to the Act(1).

(4) The authorising body may issue guidance on what sources may additionally be relevant in the case of different relevant works.

(5) A diligent search is valid, for the purposes of paragraph (1), for seven years from the earlier of the date—

- (a) on which an orphan licence of the orphan work was first granted by the authorising body; or
- (b) that the record of a diligent search undertaken in respect of a relevant work was first made public by the Office for Harmonization in the Internal Market.

(6) An orphan licensee shall provide the authorising body with such information concerning—

- (a) the diligent search; and
- (b) the use that the orphan licensee proposes to make of the orphan work,

as the authorising body may require in connection with the application for an orphan licence.

(7) The orphan licensee shall, when applying for an orphan licence, provide the authorising body with an application in the form required by the authorising body, including in electronic form, and the application shall—

- (a) demonstrate that a diligent search has been carried out; and
- (b) contain a declaration in writing by the orphan licensee stating that the information provided in the application is correct.

(8) Where an orphan licensee makes a declaration under sub-paragraph (7)(b) that the orphan licensee knows or has reason to believe is false and the orphan licensee is granted an orphan licence and carries out any of the acts restricted by copyright or the restricted acts, the orphan licensee is

(1) Schedule ZA1 was inserted by S.I. 2014/ .

liable for infringement of copyright or sections 182, 182A, 182B, 182C, 182CA, 183 or 184 of the Act as appropriate.

(9) The authorising body shall take reasonable steps to ensure that the search relied upon by the orphan licensee satisfies the requirements for a diligent search.