



## REGULATION OF THE ORPHAN WORKS IN UZBEKISTAN

**Submission Date:** February 05, 2024, **Accepted Date:** February 10, 2024,

**Published Date:** February 15, 2024

**Crossref doi:** <https://doi.org/10.37547/history-crjh-05-02-04>

**Journal Website:**  
<https://masterjournals.com/index.php/crjh>

**Copyright:** Original content from this work may be used under the terms of the creative commons attributes 4.0 licence.

**Iroda V. Alimardanova**

**Doctoral Student Of The Higher School Of Judges The Republic Of Uzbekistan, Tashkent City, Uzbekistan**

### ABSTRACT

This article is devoted to analyzing the establishment of orphan works, the regime is one of the most important tasks of modern intellectual property law. Despite this fact, it is worth noting that this topic has been little studied in the works of domestic and foreign poor authors. The problem of determining the legal regime of orphan works of visions became relevant at the beginning of the XXI century, during the period of active development of digital technologies. The works are being transferred to the Internet environment, and consent is required to ensure this process legitimate copyright holders.

### KEYWORDS

Orphan work; copyright holder; exclusive rights; copyright; intellectual property rights.

### INTRODUCTION

In the early years of the twenty-first century, while digital technologies were still actively developing, the issue of figuring out the legal framework for orphan works of visions came into focus. To verify that authentic copyright holders are involved in this process, consent is required for the transfer of the works to the Internet. Every year on January 1, an unusual holiday called Public Domain Day is celebrated worldwide(1). The holiday was invented by Canadian social activist Wallace McLean in 2004, his idea was supported and popularized by Lawrence Lessig, a law

professor at Stanford University and the creator of the most widespread open licenses, Creative Commons. January 1st was not chosen by chance for the holiday. The fact is that the rights of authors are protected by the Berne Convention, according to which the period of protection of works always begins on January 1 of the year following the year of death of the author. The time limits are calculated similarly in countries that are members of this Convention. Yet for Uzbekistan, there is no mention according to our constitution or in the paragraph of the Civil Code of the Republic of



Uzbekistan. However, Uzbekistan is a member state of the Berne Convention.

Accordingly, every year on this day, many works worldwide enter the public domain. To understand which works have achieved this status, various organizations and activists compile lists of works that have become “free”. This is quite a difficult job, as it requires taking into account many nuances. This study is devoted to the current problem of so-called orphan works that are protected, but do not need protection. So what are orphan works? “Orphan works” are works protected by copyright, but the author of which cannot be identified or found. US Library of Congress defines “orphan works” as “copyrighted works whose owners are difficult or even impossible to find.”(2)

The authors of the study undertake a conceptual analysis of the problem and explore approaches to the correct legal definition of an orphan work, considering the reasons for the appearance of orphan works, rooted in the foundations of the modern copyright system, and also studying the scope of the problem of orphan works on the example of large foreign libraries collections and assess the scale of the problem. In addition, the authors analyze those used in the modern legal system, the principles of fair use and free use exceptions (as well as legalization procedure through recognition of property as escheated) as possible solutions to the problem.

The authors conclude that existing approaches are not enough to solve the problem of orphan works, which requires the fundamental addition of copyright and the introduction of registration for such works. This definition was adopted in the Directive of the European Parliament and of the Council of 25 October 2012 2012/28/EU on certain permitted uses of orphan works (3) (Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works) - key

regulatory document establishing the rules for the use of orphan works in the Eurozone.

The same definition (with minor differences in wording) is adopted in the Report on Orphan Works and Mass Digitization (Report on Orphan Works and Mass Digitization). United States Copyright Office, June 2015(4), which provides the basis for developing a US national strategy in the field of regulation of legal relations regarding orphan works. The term “orphan works” is not defined in the legislation of Uzbekistan, but the introduction of this term would have caused a huge change in our legislation, and of course, we assume that the establishment of a special platform for the orphan works is one of our most basic tasks.

The legislation recognizes any works of intellectual work that have a specific author as objects of copyright law, in force in most countries of the world or authors, except works of an official nature (regulatory acts, court documents, official documents of international organizations, and also their official translations, state symbols, and signs, as well as symbols and signs of municipalities), messages that have purely informational character (news reports, TV programs, vehicle schedules, etc.). The law of the Republic of Uzbekistan on copyright and related rights adopted by the Legislative Chamber on March 23, 2006, also mentions these objects, materials that are not objects of copyright. The following shall not be objects of copyright:

- official documents (laws, decrees, decisions, etc.), as well as their official translations;
- official symbols and marks (flags, emblems, orders, monetary symbols, etc.);
- works of folk art;
- daily news reports or messages on current events having a nature of ordinary press information;



- results obtained by technical means intended for the production of a certain kind of work without the performance of creative activities by a person directly aimed at the creation of an individual work(6).

Thus, copyright applies to works of science, literature, and art, expressed in various forms: printed and handwritten texts, images (including photographs, maps, diagrams, illustrations, paintings, and drawings), and audiovisual and cinematographic works. Phonograms, as a rule, are recognized as objects of related rights and are subject to the same restrictions on use as for objects of copyright.

International copyright regulations require obtaining a license - permission from the copyright holder (author, publisher, broadcaster, etc.) to copy work and its publication in print or digital form. The existing legal contradiction lies in that orphan works are technically impossible to use legally. Meanwhile, the quantity of the number of orphan works stored in various libraries, archives, and other cultural institutions is enormous. By British Library estimates that 40% of the copyrighted works in its collection 150 million works in total are orphans. Many of them have no real commercial values, however, have cultural and educational value. Letters, diaries, maps, and educational and scientific texts fall into this category. According to the Center for the Study of the Public Domain at Duke Law School), orphan works probably make up the majority of 20th-century cultural material(6). With the development of the digital media industry, the problem of orphan works is getting worse, since, according to the law, about copyright, permission of the copyright holder is required not only for reproduction but also for digitization of the work. This means that an orphan work cannot legally become part of the electronic collection of a library, museum or archive and is doomed to be stored in its original

media with the danger of being lost forever.

In Europe and the USA, the problem of orphan works was realized almost a decade ago, and today significant progress has been made in regulating their legal status. In our neighbor country Russia, people began to become interested in orphan works only recently and mainly on the initiative of representatives in online communities. However, measures have already been proposed to reform the legislation of the Russian Federation and organize the corresponding infrastructure to create conditions for commercial and non-commercial use of orphans' works(7).

The main reason for the appearance of orphan works is the loss of information about the author not due to the will of the author himself. Several circumstances can cause loss of such information:

1. Information about the author is missing due to action objective factors. This happens in cases where the work was released a long time ago and exists in a single copy, and information about the author was erased due to damage or improper storage.
2. The work has been copied (in whole or in part) without indicating the author, and the original is lost. In this case, information about the author may have been preserved in some other documents, if the publisher of the copy documented his actions at the time of copying. With the adoption of legislation on copyright, publishing copies without attribution is illegal, however, there may be cases of negligence of the publisher in its duties to protect copyrights up until the data about the author itself is lost.
3. There are no platforms for publishing the results of creative work in which the rights of the author can be protected. In this case, the author can publish his work publicly available online if he still wishes to make it public.



The second reason for the appearance of orphan works is that the work is the result of the creative work of many authors who do not know about each other. The Internet allows many users to copy other people's works in whole or in part, to reinterpret their form and content at their discretion, as well as to combine them, receiving a new work. In this case, it is difficult not only to find out the name or pseudonym of all authors but even to establish any clear criteria for authorship.

At the same time, it is practically impossible to remove the result of creative work printed from the network or the real world. It is not possible because network copying is carried out freely, literally at the click of a mouse. Subsequently, it is very difficult or impossible for a conscientious user to find the author or authors of the work, which leads to a huge array of orphan works.

Another reason can be considered the irresponsible attitude of authors towards their rights. The indifference shown by the author's community to the results of their work has negative consequences for users and free, legal cultural circulation of the results of intellectual property labor in general. The author's indifference to the fate of his creation results in legal insecurity and risk for the user. The user is exposed to excessive risk and becomes a criminal if he does not take steps to find the author, however, the author may have copyright protection not interesting. The author does not bear any responsibility for a similar attitude towards one's work, since it is in any case protected by a law that forcibly gives the author an almost absolute monopoly on the disposal of his work.

The last reason can be called increased state control over the content of the Internet space. Naturally, the state monitors the content circulating on the Internet since incitement to hatred based on religion, gender, nationality, and nationality is prohibited in Uzbekistan. There is a ban on advertising and propaganda drugs,

psychotropic substances, weapons, and non-traditional relations among minors. (8) However, such a ban does not stop many authors from creating works, breaking the law.

The state has the right to bring administrative or criminal charges against liability if their act is proven and the court recognizes their guilt, but finding such authors is often the task that is not the easiest. Attempts to evade legal responsibility within the framework of current legislation push unscrupulous authors to create works with controversial or illegal content. Fearing persecution or blocking of an online account, they post their works anonymously, without providing them with accompanying data for subsequent communication between the user and the author(s). At the same time, the author is not and should not be deprived of the right to anonymous publication of your work, if it doesn't break the law. Moreover, legislation should protect the rights of a bona fide anonymous author, if necessary.

According to the American ruling in the authors' case *Guild et al. v. Google* (2011)(9), the use of orphan works is restricted to what the "fair use" concept will allow. Public institutions could not publish works before this issue was resolved in 2011 without running the risk of having to pay compensation if the legitimate copyright owners came forward and made demands.

The use of orphan works in the commercial sector is a growing trend in the United States of America. There are multiple steps involved in the process of granting permission to utilize works:

- 1) regarding the applicant's author search;
- 2) regarding the applicant's appeal to the appropriate state body and the submission of the findings of an appropriate search





3) paying the required amount if the application is found to be eligible for a favorable ruling;

4) allowing the applicant to utilize the work.

Therefore, a specific licensing process must be followed to obtain access to orphan works. In the USA, databases containing works and other intellectual output have been established. With their assistance, authorized organizations keep track of the item copyright holders' status and provide licenses by it.

The practice of other international nations. Orphan pieces of art are a concern in many nations. Let's concentrate on the most instructive instances. The Urheberrechtswahrnehmungsgesetz [UrhWahrnG] (The Law "On Collective License for Orphan Works")<sup>(10)</sup> was issued in Germany in 2013. It states that any works made before 1966 are now subject to free licensing. It is required to look for work through the registry of works and have non-commercial reasons to receive a license. A stake in Denmark's inflectional licensing scheme exists, based on which the user doesn't need to perform a thorough search. He must negotiate the terms of usage with a group that oversees collective copyright, pay a license fee, and reach an agreement.<sup>(11)</sup> A special agent for cultural heritage issues licenses by Japanese<sup>(12)</sup> legislation. The right to access the work belongs to the first individual who can attest to having conducted a thorough search. Depending on the degree of penalty for the significance of the work, the agency determines compensation in the form of monthly payments (royalty) for the use of a work in collaboration with the Ministry of Culture. A license can be obtained in the UK for a maximum of seven years. The average market value of these kinds of works is used to determine how much is paid for using orphan works. Different strategies for controlling the orphan works regime employed in foreign legal systems may become a potential basis for its regulation in Uzbekistan too.

The cultural and economic significance of orphan work must be acknowledged. The development of copyright has taken a new turn with the introduction of an authorship registration procedure. This development goes against the history of copyright, as it naturally arises from the act of creating the work and is not subject to registration. A well-managed legalization procedure for orphan works in Uzbekistan will provide fresh momentum for the advancement of intellectual property and copyright. While addressing the issue of orphan works since users' and copyright holders' rights and obligations would be impacted by pertinent legislative changes, it is crucial to consider their perspectives. Therefore, users, publishers, and the writers themselves will all gain from the inclusion of the regulatory sector of the legal regime of orphan creation in the legislation.

## REFERENCES

1. [https://en.wikipedia.org/wiki/Public\\_Domain\\_Day](https://en.wikipedia.org/wiki/Public_Domain_Day)
2. Orphan Works WIPO Seminar – May 2010 Lecture Summary Yael Lifshitz-Goldberg Hebrew University Jerusalem, page 3.
3. EU Directive of October 25, 2012 2012/28/EU on certain cases of permitted use of orphan works // Intellectual property on the Internet. <http://lexdigital.ru/2012/070/>.
4. Orphan Works and Mass Digitization // United States Copyright, URL: <http://copyright.gov/orphan/reports/orphan-works2015.pdf>.
5. Law of the Republic of Uzbekistan, 20.07.2006 year, № LRU-42, article 8.
6. Handbook on Copyright and Related Issues for Libraries. // <http://www.eifl.net/resources/eifl-handbook-copyright-and-related-issueslibraries-english>.
7. Which works of authorship are orphans and which should be used?



//[http://www.copyright.ru/news/main/2014/06/23/proizvedenie\\_ohrana](http://www.copyright.ru/news/main/2014/06/23/proizvedenie_ohrana).

8. The law of the Republic of Uzbekistan about advertising Adopted by the Legislative Chamber on December 28, 2021, Article 41. Advertising of pyrotechnic devices, weapons and military supplies, military products.
9. [https://en.wikipedia.org/wiki/Authors\\_Guild,\\_Inc.\\_v.\\_Google,\\_Inc](https://en.wikipedia.org/wiki/Authors_Guild,_Inc._v._Google,_Inc).
10. The Situation of Orphan Works under Different Jurisdictions Bzhar Abdullah Ahmed, The Chicago-Kent Journal of Intellectual Property.
11. Copyright and the regulation of orphan works: A comparative review of seven jurisdictions and a rights clearance simulation. – Mode of access: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/312779/ipresearch-orphan\\_201307.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/312779/ipresearch-orphan_201307.pdf).
12. Japan: Enforcement order of the Copyrightact. Mode of access: <http://www.wipo.int/wipolex/en/details.jsp?id=6837>

