Draft Regulations laid before Parliament under section 116D(5) of and paragraph 1D(5) of Schedule 2A to the Copyright, Designs and Patents Act 1988, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No. XXXX

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

Made - - - -	*****
Coming into force - -	*29th October 2014*

A draft of the Regulations has been laid before and approved by each House of Parliament under section 116D(5) and paragraph 1D(5) of Schedule 2A to the Copyright, Designs and Patents Act 1988(**1**).

The Secretary of State, in exercise of the powers conferred by sections 116A, 116C and 116D of and paragraphs 1A, 1C and 1D of Schedule 2A to that Act, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014 and shall come into force on 29th October 2014.

Interpretation

2. In these Regulations—

"the Act" means the Copyright, Designs and Patents Act 1988;

"authorising body" means the Comptroller;

"Comptroller" means the Comptroller-General of Patents, Designs and Trade Marks;

"diligent search" has the meaning set out in regulation 4;

"identified right holder" is a right holder of the type referred to in regulation 12(1);

"orphan licence" is a licence authorising the use of an orphan work;

(**1**) 1988 c.48, sections 116A, 116C and 116D were inserted by section 77 of the Enterprise and Regulatory Reform Act 2013 (c.24) and paragraphs 116A, 116C and 116D were inserted into Schedule 2A of the Copyright, Designs and Patents Act 1988 by section 77(4) and Part 2 of Schedule 22 to the Enterprise and Regulatory Reform Act 2013. Schedule 2A was inserted by S.I. 1996/2967.

"orphan licensee" means a person who either wishes to be granted or has been granted an orphan licence;

"orphan work" has the meaning set out in regulation 3;

"relevant work" has the meaning set out in regulation 3;

"restricted acts" means the acts in relation to a performance to which sections 182, 182A, 182B, 182C, 182CA, 183 or 184 of the Act(**2**) apply;

"right holder" has the meaning set out in regulation 3.

Relevant work, right holder and orphan work

3.—(1) "Relevant work" means a work which is protected by copyright or a performance in respect of which certain acts constitute restricted acts.

(2) A reference to a "relevant work" includes a reference to a work or a performance, which itself falls within the definition of "relevant work" and is embedded in or incorporated in, or constitutes an integral part of, another relevant work.

(3) "Right holder" in relation to a relevant work means—

(a) an owner of the copyright in the relevant work;

(b) a licensee under an exclusive licence in relation to the relevant work;

(c) a person with rights to permit or prohibit one or more of the restricted acts in relation to a performance recorded by the relevant work and, in the case of a performance, which is embedded or incorporated in or constitutes an integral part of another relevant work, a person with rights to permit or prohibit one or more of the restricted acts in relation to the performance; and

(d) a licensee under an exclusive licence in relation to those rights.

(4) A relevant work is an orphan work where, after a diligent search made in accordance with regulation 4, one or more of the right holders in the relevant work have either not been identified or, if identified, have not been located.

(5) Where a relevant work has more than one right holder and, after a diligent search made in accordance with regulation 4, one or more of the right holders have either not been identified or, if identified, have not been located, then the relevant work is an orphan work to the extent that the rights of those right holders are either not identified or not located.

(6) In these Regulations, a reference to an orphan work includes a relevant work in which it is not known whether copyright or the right to permit or prohibit the restricted acts subsists, and references to a right holder who has not been identified or located are to be read as including references to a supposed right holder.

(7) A relevant work ceases to be an orphan work to the extent that a right holder is identified in accordance with regulation 12.

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**) Section 182 was substituted by, and sections 182A – 182 C and 182CA inserted by S.I 1996/2967 and amended by S.I. 2003/2498, S.I. 2006/18, S.I 2013/1782; section 183 was amended by S.I. 2003/2498.

(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(**3**).

(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 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.

Record and register of orphan works

5.—(1) The authorising body shall maintain and update a register which sets out the details of the orphan works in respect of which—

(a) a diligent search has been carried out and an application, for the grant of an orphan licence, has been made to and is being considered by the authorising body;

(b) orphan licences have been granted together with the permitted uses of the relevant works; and

(c) orphan licences have been refused.

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