

OUT-OF-COMMERCE WORKS IN SLOVAKIA

Key principles of OOC works

- Determined in MoU published in September 2011
- Literary works (primarily books and journals) and artistic works embedded in literary works
- Purpose: digitisation and making available of OOC works
- Legal certainty: presumption of representation by CMO
- Still protected by copyright, but no longer available in customary channels of commerce
- Voluntary licencing agreements usually between CMOs and publicly accessible cultural institutions
- Wide publicity needed = for possible objections of rightholders (opt-out)
- Cross border and/or commercial uses = possibility to limit the licence

OOO works in Slovakia (1)

- Established by the amendment of old Copyright Act (Act No. 618/2003 Coll. On Copyright and Related Rights) in 2014
- In force as of 29 October 2014
- Together with transposition of Orphan Works Directive
- First ECL ever in Slovak Copyright Act
- Then transposed into new Copyright Act (Act No. 185/2015 Coll. On Copyright) – in force as of 1 January 2016

OOO works in Slovakia (2)

- ◎ Definition of OOC work according to Copyright Act:
 - Published literary work expressed in written form
 - In particular a book, a magazine and a newspaper
 - Also photographic works and works of fine arts that are incorporated in OOC work or are joint with it
- ◎ Conditions (cumulatively fulfilled):
 - A) its copy cannot be acquired by paid transfer of title; this does not apply to the purchase of second-hand item,
 - B) is deposited in a library, an archive or a museum and
 - C) is inscribed in the publicly accessible list of OOC works administered by the Slovak National Library (SNL).

OOO works in Slovakia (3)

- ◎ Process of inscription of OOC work into the list:
 - Proposal for insertion into the list = any person (natural person or legal entity)
 - SNL publishes proposal on its website without undue delay
 - SNL inserts a work into the list if, within three months after the filing of the proposal for insertion of the work into the list,
 - a) it was not possible according to its finding to acquire a copy of the work by paid transfer of title despite making reasonable efforts and subject to usual conditions, and
 - b) the author did not raise the objections in writing against the insertion of the work into the list
- ◎ Author can **anytime** ask the SNL in writing to exclude OOC work from the list (without specification of reason)

OOO works in Slovakia (4)

◎ Licensing:

- Through ECL system
- Representative CMO grants the user the licence (by ECL) to use the OOC work for:
 1. making a copy of it,
 2. making it available to the public or
 3. public distribution of its copy by means of transfer of title
- Possibility of opt-out for rightholders
- LITA concludes ECL with SNL

◎ Statistics (by March 2017):

- inserted in the list – approx. 37270 monographs
(+ around 111 000 monographs proposed for insertion)
 - approx. 1080 periodicals

Comparison of national system of OOC works with proposed EU legislation and Case C-301/15 (Soulier and Doke)

- ⦿ Slovak Copyright Act = author can anytime ask for exclusion of his/her work from the list without specification of reason
- ⦿ Slovak Copyright Act = no specific rules for publishers (no exclusive licence)
- ⦿ Proposed EU Legislation
 - out-of-commerce status of collection as a whole
 - includes those works that have never been in customary channels of commerce
 - not limited to literary works and works incorporated in them or joint with them
 - cross-border uses – in all Member States

Thank you for your attention!

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