



The Law Library of Congress

REPORT FOR THE SUPREME COURT

November 2011

Global Legal Research Center
LL File No. 2012-006812

Legislation on Orphan Works

This report concerns legislation on orphan works in Australia, China, the European Union, Hong Kong, Japan, Korea, Mexico, and Taiwan.

The Library of Congress
James Madison Memorial Building, 101 Independence Avenue, S.E., Room LM-240
Washington, DC 20540-3200
(202) 707-6462 (phone), (866) 550-0442 (fax), law@loc.gov (email)
<http://www.loc.gov/law>

Contents

Australia 1

China 2

European Union 3

Hong Kong 7

Japan 8

Mexico 10

South Korea 11

Taiwan 13

2012-006812

LAW LIBRARY OF CONGRESS
AUSTRALIA
LEGISLATION ON ORPHAN WORKS

Australia's copyright legislation does not contain provisions that specifically allow an exception for the use of works where the copyright owner cannot be found, and a special licensing regime has not been created for such works. The use of orphan works would therefore be an infringement of copyright unless one of the existing exceptions applies.

¹ In 2006, a new provision was inserted into the Copyright Act 1968 (Cth) to provide a limited exception that may allow cultural institutions to publish orphan works, subject to certain conditions being met.²

The Australian Attorney-General has announced that the government intends to seek a review of copyright laws by the Australian Law Reform Commission, to commence later in 2011, which will likely include consideration of the orphan works issue.³

Prepared by Kelly Buchanan
Foreign Law Specialist
November 2011

¹ See *Are There Any Exceptions to Infringement?*, ATTORNEY-GENERAL'S DEPARTMENT, http://www.ag.gov.au/www/agd/agd.nsf/Page/Copyright_Copyrightquestions_Arethereanyexceptionstoinfringement (last visited Oct. 27, 2011). See also Sally McClelland, *The Orphan Works Problem*, ARTS LAW CENTRE OF AUSTRALIA (Mar. 31, 2011), <http://www.artslaw.com.au/articles/entry/the-orphan-works-problem/>.

² Copyright Act 1968 (Cth), s 200AB, <http://www.comlaw.gov.au/Details/C2011C00750>. For detailed information about this provision, see Australian Libraries Copyright Committee & Australian Digital Alliance, *A User's Guide to the Flexible Dealing Provision for Libraries, Educational Institutions and Cultural Institutions (Section 200AB of the Copyright Act 1968 (Cth))* (2008), <http://digital.nla.gov.au/documents/FlexibleDealingHandbookfinal.pdf>; National Museum of Australia, *Flexible Dealing and Cultural Institutions: Statement of Principles Regarding the Use of Section 200AB of the Copyright Act (1968)* (Sept. 2010), http://nma.gov.au/shared/libraries/attachments/about_us/cici/statement_principles/files/35143/CICI_Statement_Principles_Section_200AB.pdf.

³ Hon. Robert McClelland MP, *Address to the Blue Sky Conference on Future Directions in Copyright Law* (Feb. 25, 2011), http://www.ag.gov.au/www/ministers/mcclelland.nsf/Page/Speeches_2011_FirstQuarter_25February2011-AddresstotheBlueSkyConferenceonfuturedirectionsinCopyrightlaw. In a more recent speech delivered on October 14, 2011, the Attorney-General stated that he intends to release terms of reference for the review by the end of the year and that these will include: "fair dealing, the 10 per cent rule and private copying when format-shifting, time-shifting or for special purposes." Hon. Robert McClelland MP, *Keynote Address to 15th Biennial Copyright Symposium* (Oct. 14, 2011), http://www.ema.gov.au/www/ministers/mcclelland.nsf/Page/Speeches_2011_FourthQuarter_14October2011-KeynoteAddresssto15thBiennialCopyrightSymposium. See also Australian Government, *Government Response to the Report of the Government 2.0 Taskforce 11-12* (May 2010), <http://www.finance.gov.au/publications/govresponse20report/doc/Government-Response-to-Gov-2-0-Report.pdf>, agreeing that a review of the orphan works issue should be conducted by the Attorney-General's Department.

2012-006812

LAW LIBRARY OF CONGRESS
CHINA
LEGISLATION ON ORPHAN WORKS

China has not passed legislation directly regulating orphan works. The Copyright Law of the People’s Republic of China, which was recently amended in 2010, does not contain a definition of orphan works.

The existing Copyright Law regulates the situations where the individual copyright owner has died, or an organizational copyright owner has ceased to exist. Under both situations, if there is no successor to inherit the copyright, the copyright may eventually go to the state instead of entering the public domain.¹ The law, however, does not specify which state authority may enjoy the copyright, or what the state can do in cases of infringement of such copyright.

The implementation regulations of the Copyright Law, promulgated in 2002, contain a provision on unknown authors, saying the copyright will “be exercised by the holder of the original copy of the work except the right of authorship.”² If the author is later ascertained, “the copyright shall be exercised by the author or the heirs thereof.”³

Prepared by Laney Zhang
Senior Foreign Law Specialist
November 2011

¹ Zhonghua Renmin Gongheguo Zhuzuoquan Fa [Copyright Law] (promulgated by the Standing Committee of the National People’s Congress (NPC) on Sept. 7, 1990, last amended Feb. 26, 2010, effective Apr. 1, 2010), art. 19, English translation provided by the Asian Legal Information Institute (Asian LII), <http://www.asianlii.org/cn/legis/cen/laws/clotproc402/>. Zhonghua Renmin Gongheguo Jicheng Fa [Law on Succession] (promulgated by the NPC on Apr. 1, 1985, effective Oct. 1, 1985), art. 32, English translation provided by Asian LII, <http://www.asianlii.org/cn/legis/cen/laws/losotproc426/>.

² Zhonghua Renmin Gongheguo Zhuzuoquan Fa Shishi Tiaoli [Regulations for the Implementation of Copyright Law of the People’s Republic of China] (promulgated by the State Council on Aug. 2, 2002, effective Sept. 15, 2002), art. 13, English translation available at <http://www.asianlii.org/cn/legis/cen/laws/rotiotclotproc772/>.

³ *Id.*

2012-006812

LAW LIBRARY OF CONGRESS
EUROPEAN UNION
LEGISLATION ON ORPHAN WORKS

Executive Summary

In May 2011, the European Commission introduced a Proposal for a Directive on Certain Permitted Uses of Orphan Works designed to facilitate the digitization and dissemination of orphan works across the European Union (EU). Orphan works are defined as those whose right holder is not identified or cannot be found, provided that a diligent search has been undertaken by public libraries, educational institutions, museums, archives, and public broadcasting organizations. Once a work has been deemed as such in one EU Member State, then it is deemed as orphan throughout the EU. The Draft Directive provides for permitted and authorized uses by those organizations mentioned above.

I. Introduction

On May 24, 2011, the Commission adopted a proposal for a Directive on Certain Permitted Uses of Orphan Works (hereinafter the Draft Directive).¹ Prior to its adoption, much preparatory work occurred at the European Union (EU) level. In 2005, the Commission took the initial step by adopting the 2010 Digital Libraries Initiative² designed to ensure that Europe's cultural heritage is available online by establishing a pan-European digital library and archive, the so-called *Europeana*.³ In 2006, in order to establish a legal framework on orphan works, the Commission recommended that the EU Member States adopt legislation on orphan works.⁴ In addition, in 2006, the Commission also established a High Level Expert Group on Digital Libraries to deal with digitization and online accessibility of cultural material, including orphan

¹ *Proposal for a Directive of the European Parliament and of the Council on Certain Permitted Uses of Orphan Works*, COM(2011) 289 final (May 24, 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0289:FIN:EN:PDF>.

² *Communication from the Commission i2010: Digital Libraries*, COM(2005) 465 final (Sept. 30, 2005), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0465:FIN:EN:PDF>.

³ The Commission asserts that the EU has fallen behind in creating text-based digital libraries. It cites the example of Google, which has already digitized 10 million books, whereas only 2 million digitized books exist in EU libraries and cultural institutions. So far, Europeana contains only 13% of digitized books. *Commission Staff Working Paper: Impact Assessment on the Cross-Border Online Access to Orphan Works, Accompanying the Document Proposal for a Directive of the European Parliament and of the Council on Certain Permitted Uses of Orphan Works*, SEC(2011) 615 final, at 7 (May 24, 2011), http://ec.europa.eu/governance/impact/ia_carried_out/docs/ia_2011/sec_2011_0615_en.pdf.

⁴ Commission Recommendation 2006/585/EC of August 24, 2006 on the Digitisation and Online Accessibility of Cultural Material and Digital Preservation, 2006 OFFICIAL JOURNAL OF THE EUROPEAN UNION [O.J.] (L 236) 28, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:236:0028:0030:EN:PDF>.

works.⁵ The Group produced two major documents: (a) a Final Report on Digital Preservation, Orphan Works and Out-of-print Works,⁶ and (b) a Memorandum of Understanding on Diligent Search Guidelines for Orphan Works, which was signed by representatives of libraries, archives, and right holders.⁷

In 2008, the Commission's Green Paper on Copyright in the Knowledge Economy dealt with the issue of orphan works.⁸ A public consultation ensued on the need to take further action on orphan works at the EU level. An impact assessment was also undertaken to evaluate the possible policy options available and analyze the effect of each option.⁹ Finally, in 2010 the Commission in its Communication, "A Digital Agenda for Europe,"¹⁰ which is part of the Europe 2020 Strategy, identified the need to introduce legislation at the EU level.

II. Draft Directive on Orphan Works

Since the 2006 Commission's recommendation, a small number of EU Members have introduced legislative measures. For instance, the Commission cites that the Nordic countries—Denmark, Finland, Sweden, and Norway—have no specific legislation, but they have extended the mandate of collecting societies to represent right holders who are not members of a collective society. The Hungarian Copyright Act provides that one may obtain a license to use orphan works from a central authority, which ensures that a diligent search has been conducted.¹¹ The Commission has acknowledged that such a differing approach pursued by EU Members individually will hinder access to orphan works across the EU and will also impede the smooth functioning of the internal market.¹²

⁵ Commission Decision of February 27, 2006 on Setting Up a High Level Expert Group on Digital Libraries, 2006 O.J. (L 63) 25, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:063:0025:0027:EN:PDF>.

⁶ i2010: Digital Libraries High Level Expert Group – Copyright Subgroup, Final Report on Digital Preservation, Orphan Works and Out-of-Print Works (June 4, 2008), available at http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/reports/copyright/copyright_subgroup_final_report_26508-clean171.pdf.

⁷ Memorandum of Understanding on Diligent Search Guidelines for Orphan Works (June 4, 2008), available at http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/mou.pdf

⁸ *Green Paper on Copyright in the Knowledge Economy*, COM(2008) 466 final (July 16, 2008), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0466:FIN:EN:PDF>.

⁹ Among the options examined, the assessment reviewed the possibility of doing nothing, licensing through extended collective societies, an orphan-specific license granted by collecting societies, and the mutual recognition of action at the national level on orphan works. *Proposal for a Directive*, *supra* note 1, at 2.

¹⁰ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Digital Agenda for Europe*, COM(2010) 245 final/2 (Aug. 26, 2010), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0245:FIN:EN:PDF>.

¹¹ *Commission Staff Working Paper*, *supra* note 3, at 12, note 42.

¹² *Proposal for a Directive*, *supra* note 1, recital 6.

A. Scope and Definition

The scope of the Draft Directive extends not only to the EU but to the European Economic Area as well.¹³ Its subject matter covers works first published or broadcast in a Member State. Such works include: (a) books, journals, newspapers, magazines, or other written products that are included in public libraries, educational institutions, museums, or archives; (b) cinematographic or audiovisual works included in the collections of film heritage institutions; (c) cinematographic, audio, or audiovisual works produced prior to December 31, 2002, by public broadcasting organizations that are in their archives.

The Draft Directive defines orphan works as those works whose right holder is not identified, or if he is identified, cannot be found after a diligent search has been conducted by the relevant organizations and pursuant to the procedure prescribed in article 3 of the Draft Directive.¹⁴

The pertinent organizations include public libraries, educational institutions, museums, archives, film heritage institutions, or public service broadcasting organizations. They are required to perform a diligent search for each work in the Member State of first publication or broadcast only in order to avoid duplicate searches. “Diligent search” means thorough search of appropriate sources for each work. The responsibility for determining the appropriate sources is assigned to the EU Members after consulting with right holders and users. Members are also required to ensure that the outcome of diligent searches performed in their territories is recorded in databases available to the public.¹⁵

If a work is deemed an orphan in an EU Member, then it is deemed an orphan in all twenty-seven EU Members.¹⁶

B. Permitted Uses of Orphan Works

The above-stated organizations may use orphan works for purposes appropriate to their public interest missions, which are to preserve, restore, and make the work accessible for cultural and educational purposes. The organizations are allowed to use orphan works in two ways: (a) by making the orphan work available; and (b) by reproduction. Both concepts, “making a work available” and “reproduction,” are further defined by Directive 2001/29/EC on the

¹³ The European Economic Area (EEA) covers the twenty-seven EU countries in addition to the three members of the European Free Trade Association (EFTA)—Iceland, Liechtenstein, and Norway. The EEA was established in 1994 on the basis of an agreement between EFTA and the then European Community. New EU Members become members of the EEA through application. The agreement provides that the four fundamental freedoms of the internal market, related to goods, persons, services, and capital, will also apply to EEA members. *EEA Agreement*, EUROPEAN FREE TRADE ASSOCIATION, <http://efta.int/eea/eea-agreement.aspx> (last visited Oct. 31, 2011).

¹⁴ *Proposal for a Directive*, *supra* note 1, art. 2.

¹⁵ *Id.* art. 3.

¹⁶ *Id.* art. 4.

Harmonization of Certain Aspects of Copyright and Related Rights in the Information Society.¹⁷ Article 3 of Directive 2001/29 refers to “making a work available,” in case of authors, performers, and phonograph producers who “have the exclusive right to authorize or prohibit the dissemination of their work through wire or wireless means so that members of the public may assess them from a place and at a time individually chosen by them.”¹⁸ “Reproduction right” is defined in article 2 of Directive 2001/29, as “the exclusive right of authors, performers, phonograms producers, producers of first fixations of films and broadcasting organizations to authorize or prohibit, direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part.”¹⁹

C. Authorized Uses of Orphan Works

EU Members have the right to authorize the pertinent organizations stated above to use an orphan work for purposes other than those related to their public interest missions under the condition that such organizations must²⁰

- keep records of diligent searches performed;
- keep records, which are publicly available, of their use of orphan works;
- state the name of the right holder in any use of the work, when such right holder is identified but not located (such a right holder has the right to claim remuneration within a maximum deadline of five years from the date of the act that gave rise to such a claim; EU Members have the right to impose deadlines of a lesser duration); and
- pay remuneration to right holders who end the orphan status of a work for the use that has been made.

D. Review Clause

Under the Draft Directive, the Commission, within a year after entry into force of the Draft Directive, has the right to prepare a report on whether to expand the scope of the Directive and include other protected subject matter, particularly phonograms and stand alone photographs or other images.²¹

Prepared by Theresa Papademetriou
Senior Foreign Law Specialist
November 2011

¹⁷ Directive 2001/29 on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society, 2001 O.J. (L 157) 10, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:167:0010:0019:EN:PDF>.

¹⁸ *Id.* art. 3, para. 2.

¹⁹ *Id.* art. 2.

²⁰ *Proposal for a Directive, supra* note 1, art. 7.

²¹ *Id.* art. 11.

2012-006812

LAW LIBRARY OF CONGRESS
HONG KONG
LEGISLATION ON ORPHAN WORKS

Hong Kong has a provision that affects a small group of orphan works. The 1997 Copyright Ordinance of Hong Kong provides that there is no infringement in the use of anonymous or pseudonymous works based on the reasonable assumption that either the copyright has expired or the author has died fifty or more years ago.¹

The provision is contained in Section 66(1) of the Copyright Ordinance, which states:

Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when-

- (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and
- (b) it is reasonable to assume-
 - (i) that copyright has expired; or
 - (ii) that the author died 50 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.²

Prepared by Laney Zhang
Senior Foreign Law Specialist
November 2011

¹ Copyright Ordinance, 1997, Cap. 528, § 66 (1), BILINGUAL LAWS INFORMATION SYSTEM, http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/2C08ADD260950D61482575EF0014E145?OpenDocument&bt=0.

² *Id.*

2012-006812

LAW LIBRARY OF CONGRESS
JAPAN
LEGISLATION ON ORPHAN WORKS

Japanese Copyright Law allows a user to apply to the Commissioner of the Agency for Cultural Affairs to obtain a license to use a copyright work in cases “where, after the due diligence, the copyright owner cannot be found for the reason that he is unknown or for other reasons.”¹ When the Commissioner is convinced that the applicant cannot locate the copyright owner despite reasonable efforts, he grants a license. The user must deposit compensation in an amount fixed by the Commissioner. The user must indicate receipt of the license and the date it was issued on the copies of the work reproduced. The relevant provisions of the Copyright Law are as follows:

(Exploitation of works in the case where the copyright owner thereof is unknown)

Article 67.

(1) Where a work has been made public, or where it is clear that it has been offered to or made available to the public for a considerable period of time, the work may be exploited under the authority of a compulsory license issued by the Commissioner of the Agency for Cultural Affairs and upon depositing on behalf of the copyright owner compensation the amount of which is fixed by the Commissioner as corresponding to an ordinary rate of royalty, in the case, designated by Cabinet Order, where, after the due diligence, the copyright owner cannot be found for the reason that he is unknown or for other reasons.

(2) A person, who intends to apply for a compulsory license mentioned in the preceding paragraph, shall submit to the Commissioner of the Agency for Cultural Affairs an application stating means of exploiting a work and other matters designated by Cabinet Order, together with data for explanation to the effect that the copyright owner cannot be found or other data designated by Cabinet Order.

(3) Copies of the work reproduced under the provisions of the preceding paragraph (1) shall bear an indication to the effect that the reproduction of these copies has been licensed in accordance with the provisions of that paragraph and give the date when the license was issued.

(Exploitation of a work while applying for a compulsory license)

Article 67bis.

(1) A person, who has applied for a compulsory license mentioned in paragraph (1) of the preceding Article (hereinafter in this Article referred to merely as “license”), may exploit a work concerned with such application by the same means of exploitation as those stated in such application, for a period when such application is pending (in the case where the copyright owner can be found, for a period until such finding), upon

¹ Chosakuken hō [Copyright Law], Law No. 48 of 1970, last amended by Law No. 53 of 2009, art. 67, para. 1. An English translation of the Copyright Law is available on the Copyright Research and Information Center’s website, at http://www.cric.or.jp/cric_e/clj/ (last updated Sept. 2011).

depositing a security money the amount of which shall be fixed by the Commissioner of the Agency for Cultural Affairs by taking account the means of exploitation of the work stated in such application; provided, however, that he may not exploit such work in the case where it is clear that the author of such work intends to discontinue the publication or other exploitation of his work.

(2) Copies of the work reproduced under the provisions of the preceding paragraph shall bear an indication to the effect that such copies have been reproduced in accordance with the provisions of the paragraph and give the date of the application for a license.

(3) In the case where a person exploiting a work under the provisions of paragraph (1) (hereinafter referred to as “applying user”) has been issued a license, he shall not be required, notwithstanding the provisions of paragraph (1) of the preceding paragraph, to deposit the amount of the compensation, mentioned in that paragraph, corresponding to that of a security money already deposited under the provisions of paragraph (1) (in the case where the amount of such security money exceeds that of such compensation, that amount), under the provisions of paragraph (1) of that Article.

(4) An applying user shall, in the case where he has received a refusal to issue a license (excluding the case where the copyright owner can be found before such refusal), deposit on behalf of the copyright owner compensation the amount of which shall be fixed by the Commissioner of the Agency for Cultural Affairs as corresponding to the amount of royalty fees for the exploitation of a work under the provisions of paragraph (1) for a period until such refusal. In this case, the amount of a security money, already deposited under the provisions of that paragraph, corresponding to that of such compensation (in the case where the amount of such compensation exceeds that of such security money, that amount) shall be considered as deposited as the amount of such compensation.

(5) An applying user shall, in the case where the copyright owner can be found before an issuance of a license or a refusal to issue it, pay to the copyright owner compensation the amount of which is corresponding to that of royalty fees for the exploitation of a work under the provisions of paragraph (1), for a period until the time when the copyright owner can be bound.

(6) In the cases mentioned in the preceding three paragraphs, the copyright owner can, based upon his right to receive compensation mentioned in paragraph (1) or (2) of the preceding Article, receive a repayment from a security money deposited under the provisions of paragraph (1).

(7) A person, who has deposited a security money under the provisions of paragraph (1), can recover all or a part of such security money, as provided by Cabinet Order, in the case where the amount of such security money exceeds that which the copyright owner can receive as a repayment under the provisions of the preceding a [sic] paragraph.²

Prepared by Sayuri Umeda
Senior Foreign Law Specialist
November 2011

² This translation is from the Copyright Research and Information Center’s website, cited in the note above.

2012-006812

LAW LIBRARY OF CONGRESS
MEXICO
LEGISLATION ON ORPHAN WORKS

Mexico's Federal Law on Copyright does not include provisions specifically addressing the issue of orphan works.¹

In 2010, Mexico's National Copyright Institute (the Mexican government's copyright agency) reported to the World Intellectual Property Organization that Mexican law does not regulate orphan works, nor are there practices in place to deal with this issue.²

A research effort using online databases maintained by Mexico's Congress that provide information on legislative initiatives did not reveal recent proposals addressing the issue of orphan works.

Prepared by Gustavo Guerra
Senior Foreign Law Specialist
November 2012

¹ Ley Federal del Derecho de Autor [Federal Copyright Law], *as amended*, Diario Oficial de la Federación [D.O.], Dec. 24, 1996, available on the website of Mexico's House of Representatives, at <http://www.diputados.gob.mx/LeyesBiblio/pdf/122.pdf>.

² Misión Permanente de México ante la Oficina de las Naciones Unidas y Otros Organismos Internacionales, Respuesta al Cuestionario sobre Sistemas de Registro y Deposito Voluntario [Response to Survey on Voluntary Registration and Deposit Systems Submitted by Mexico's National Copyright Institute to the World Intellectual Property Organization], at 8 (Apr. 16, 2010), available on the website of the World Intellectual Property Organization, at <http://www.wipo.int/copyright/es/registration/replies/pdf/mexico.pdf>.

2012-006812

LAW LIBRARY OF CONGRESS
SOUTH KOREA
LEGISLATION ON ORPHAN WORKS

The Korean Copyright Act allows a user to apply to the Minister of Culture, Sports and Tourism to obtain a license to use a copyrighted work in cases where “any person fails, despite his/her considerable efforts ... to identify the holder of [the] author’s property right to a work (excluding foreigner’s works) made public.”¹ When the Minister is convinced that the applicant cannot locate the copyright owner despite considerable efforts, he grants a license. The user must deposit compensation in an amount determined by the Minister.² The user of a work must indicate the fact that the exploitation is made with the Minister’s approval and the date when the approval was issued.³ The provision of the Copyright Act is as follows:

Article 50 (Exploitation of Works in Which the Owner of Author’s Property Rights is Not Known)

(1) Where any person fails, despite his/her considerable efforts which meet the standards prescribed by Presidential Decree, to identify the holder of author’s property right to a work (excluding foreigner’s works) made public or his/her place of residence, and therefore is unable to obtain any authorization for its exploitation, he/she may exploit the work with approval of the Minister of Culture, Sports and Tourism under the conditions prescribed by Presidential Decree, and by depositing a compensation money under the standards as determined by the Minister of Culture, Sports and Tourism.

(2) The person who exploits a work under the provision of Paragraph (1) shall indicate the fact that the exploitation is made with approval and the date when approval is issued.

(3) When the work legally licensed pursuant to the provisions of paragraph (1) becomes the object of legal license again, the procedures of considerable endeavors corresponding to the standards prescribed by Presidential Decree pursuant to the provisions of paragraph (1) may be omitted: *Provide*, That the holder of author’s property right raises an objection according to the procedures prescribed by Presidential Decree before approval on legal license to the work, the same shall not apply.

(4) The Minister of Culture and Tourism shall notify the content of legal license on telecommunication networks in accordance with the Presidential Decree.⁴

¹ Copyright Act, Act No. 8101, Dec. 28, 2006, *last amended by* Act No. 9785, July 31, 2009, art. 50, para. 1, English translation available through the website of the Korea Legislative Research Institute (KLRI), at <http://elaw.klri.re.kr/eng/main.do> (last visited Oct. 31, 2011). A membership registration at no cost is required to obtain the translation (click “sign up” in upper left-hand corner). KLRI is a government-funded research institute.

² *Id.*

³ *Id.* art. 50, para. 2.

⁴ *Id.* art. 50.

Prepared by Sayuri Umeda
Senior Foreign Law Specialist
November 2011

2012-006812

LAW LIBRARY OF CONGRESS
TAIWAN
LEGISLATION ON ORPHAN WORKS

Taiwan enacted an orphan works provision in 2010. The provision is not in its copyright law but in the Law for the Development of the Cultural and Creative Industries (the Law).¹ The provision created a licensing regime that allows a copyright user, who has failed to locate the copyright owner after using his best effort, to use the copyrighted works after obtaining the permission of the copyright authority and making a deposit of the amount needed for usage remuneration.

According to article 24 of the Law, if a copyright user, “for the purpose of creating cultural and creative products,” uses his best effort but fails to obtain authorization from the owner due to either the identity or the location of the owner being unknown, the user may apply to the competent copyright authority, stating the reasons for his failure to obtain the authorization.² The copyright authority will then conduct an investigation. If as a result of the investigation the user obtains permission from the authority, the user will deposit the amount needed for usage remuneration with the authority, and may then utilize the work within the permitted scope.³ The amount needed for usage remuneration is to be determined by the calculation method stipulated by the authority, according to this article.⁴

Prepared by Laney Zhang
Senior Foreign Law Specialist
November 2011

¹ Law for the Development of the Cultural and Creative Industries (Feb. 3, 2010), art. 24, MINISTRY OF JUSTICE LAWS AND REGULATION DATABASES OF THE REPUBLIC OF CHINA, <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=H0170075> (in Chinese), English translation available on the Executive Yuan Council on Cultural Affairs website, <http://www.cca.gov.tw/ccaImages/laws/247/1-0-5.pdf> (last visited Oct. 27, 2011).

² *Id.*

³ *Id.*

⁴ *Id.*