

**Decree 100/2009. (V. 8.) Korm.
of the Government
on the detailed rules related to the licensing of certain use of orphan works**

By virtue of the authorization under Article 112 (4) of the Act LXXVI of 1999 on copyright, proceeding within its competence determined by Article 35 (1) (b), the Government orders as follows:

Article 1

(1) The provisions of this Decree shall be applied to the licensing of use of those works subject to the Act on copyright (hereinafter referred to as Copyright Act), where the person entitled to license the use (hereinafter referred to as author) is unknown or resides in an unknown place.

(2) Within the scope specified in paragraph (1) the provisions of this Decree shall be applied *mutatis mutandis* to the licensing of use of the performances of performers as well.

Article 2

(1) The application for granting the license of use shall include the information suitable to identify the work and – if possible – the author, in case of more authors to identify all authors, in addition the mode, the extent, the planned duration of use and any other circumstances which are necessary to determine the fee of the license of use. In the application for granting the license of use it shall be indicated whether the purpose of use is – directly or indirectly – to gain revenue or increase revenue.

(2) In the application the applicant shall include and he shall attach all the proofs, which certify that for the conclusion of the licensing agreement the applicant has taken the appropriate measures in a manner that are deemed reasonable under the given circumstances and with regard to the concerned type of work and mode of use to quest the author and the quest of the author is unsuccessful.

(3) If the licenses of more authors are necessary for the use of the work and not all of them are unknown or reside in an unknown place the licensing agreement concluded with the known authors residing in a known place shall be attached to the application.

(4) If more authors of the work are unknown or known but reside in an unknown place the Hungarian Patent Office (hereinafter referred to as HPO) shall grant the license only if the application has been filed in respect of all such authors of the work and the license can be granted in respect of all such authors. The license agreement concluded with known authors residing in an unknown place shall be attached to the application.

(5) The license may be requested for the use of only one work in the application. One application concerning more works may be filed in case the application is for the same mode of use of the same author's works belonging to the same type of works.

Article 3

(1) The measures determined in Article 2 (2) may be – under the circumstances of the matter – particularly as follows:

(a) search in the database edited upon the voluntary register of works of the HPO, search in the databases of the concerned organizations registered in Hungary and performing collective management of rights, also in respect of the requested mode of use, search in databases available in the Internet, search in databases suitable to find the residence of the authors and search in databases of collections by the type of works, available for the public;

(b) request for information from the organizations performing the usual publication by type of works, from persons performing an other use of the work, from other authors of the work who are known and can be found, as well as from the organizations performing official functions in connection with the type of work;

(c) advertisement in national daily newspapers.

(2) In case of works, where it can be deemed that the first publication of the work was not in Hungary the measures under paragraph (1) shall be taken also in the country where the work was first published if it does not come up against disproportionate difficulties.

Article 4

(1) In proceedings before the HPO regulated by this Decree an administrative service fee shall be paid which constitutes the income of the HPO.

(2) A service fee of 102,500 HUF shall be paid for the application for the grant of the licensing of use.

(3) The extent of the fee of the application under paragraph (2) is 40,000 HUF if the application is for the licensing of a use the purpose of which is neither directly nor indirectly to gain revenue or to increase revenue.

(4) The extent of the fee of the application under paragraph (2) is 92,500 HUF if the application is filed in a form drawn up by the HPO for this purpose. The extent of this application is 30,000 HUF if the application is for the licensing of a use the purpose of which is neither directly nor indirectly to gain revenue or to increase revenue and it is filed in a form drawn up by the HPO for this purpose.

(5) The administrative service fee of the application for the withdrawal of the license of use is 10,500 HUF.

(6) No other allowance and exemption may be applied for the payment of the administrative service fee, the fee may not be reimbursed.

(7) The fees determined in paragraphs (2) to (5) shall be paid to the account No. 10032000-01731842-00000000 of the HPO kept with the Hungarian State Treasury by bank transfer or money order, with the indication of the identifying data (reference number or license number) and the purpose (entitlement) as well as with the indication "Treasury Transaction Code 310". The fee becomes due at the time of the filing of the application.

(8) The legal provisions on the specific characteristics of the requirement of producing financial statements and of book-keeping relating to budgetary organizations shall apply to the treatment, accounting, record-keeping of the fee determined in paragraphs (2) to (5).

Article 5

If the application does not meet the requirements laid down in this Decree or the administrative service fee has not been paid, the applicant shall be invited within thirty days after the filing of the application – fixing a thirty-day time limit – to rectify the irregularities. The application shall be refused if the applicant – in spite of the invitation to rectify the irregularities – still fails to pay the administrative service fee.

Article 6

(1) If the application meets the requirements laid down in paragraph (2) and the applicant has paid the fee under Article (4) (2) to (4) the HPO shall grant the license of use.

(2) The HPO shall determine the extent of the license within the framework of the application. In the case defined in Article (2) (3) and (4) the license of use shall not extend beyond the effect of the license agreement concluded with other authors either.

(3) The earliest date when the use may commence is the day when the ruling enters into force. If the deposition of the remuneration is the condition of the commencement of use, the earliest date when the use may commence is the day after the day when the remuneration is deposited in the account No. 10032000-01731842-00000000 of the HPO kept with the Hungarian State Treasury by bank transfer or money order, with the indication of the identifying data (reference number or license number) and the purpose (entitlement) as well as with the indication "Treasury Transaction Code 310". The depositor shall not dispose over the deposited amount further on. The legal provisions on the specific characteristics of the requirement of producing financial statements and of book-keeping relating to budgetary organizations shall apply with the divergences specified by the Copyright Act to the treatment, accounting, record-keeping of the deposits.

(4) The time limit for administration in the proceedings before the HPO is sixty working days.

Article 7

(1) The provisions governing the decision on the application for the license of use shall apply to the decision on the application for the withdrawal of the license of use with the divergences laid down in paragraph (2).

(2) In the ruling on the withdrawal of the license of use the HPO shall decide on the proportionate fees of the use that may be performed in the period till the person or the residence of the author becomes known and till one year from this date but not later than the lapse of the license and – in case it is deposited – if it is necessary on the reimbursement of the difference between the fee deposited and determined in the license of use and the remuneration determined by the HPO in the ruling on the withdrawal.

Article 8

(1) The orphan work for which a license of use has been granted shall be kept by HPO in an administrative register inspectable by the public and electronically accessible.

(2) The register shall include registration number related to the orphan work, information suitable to identify the work, information related to the extent of use licensed in connection with the work, the extent of the remuneration and the day of deposit, the fact and effect of the withdrawal of the license of use. The register shall also include the fact and subject matter of the proceedings being in process in connection with the work.

(3) In case the holder of the license of use gives his written authorization the HPO may publish the information identifying the user and providing his contact details and may make them available to the public in its register.

(4) The HPO shall indicate any modification – referring to the date of the modification – in data under paragraph (2) related to the orphan works in the register without delay.

Article 9

No procedural acts related to the licensing of use of orphan works may be administered electronically.

Article 10

(1) This Decree shall enter into force – with the exception under paragraph (2) – on the eighth day after its promulgation.

(2) Article 13 shall enter into force on 1 October 2009.

Article 11

The administration time limit being modified through the repeal of Article 6 (4) by Article 12 (3) of this Act shall apply to the application filed after 31 December 2009 provided that in respect of applications where more than forty working days are left till the administration time limit on 31 December 2009, the remaining period of the administration time limit shall be determined as if the application had been filed on 1 January 2010.

Article 12

(1) Article 9 of this Decree shall be repealed on 30 September 2009.

(2) Article 13 of this Decree shall be repealed on 2 October 2009.

(3) Article 6 (4) of this Decree shall be repealed on 31 December 2009.

(4) This Article shall be repealed on 1 January 2010.

Article 13

Article 4 (4) of this Decree shall be replaced by the following provision:

“(4) The extent of the fee regulated by paragraph (2) shall be 92,500 HUF if the application has been filed in a form drawn up by the HPO for this purpose or electronically. The extent of this application shall be 30,000 HUF if the application is for the licensing of a use the purpose of which is neither directly nor indirectly to gain revenue or to increase revenue and it is filed in a form drawn up by the HPO for this purpose.”

Article 14

This Decree serves the conformity with the Recommendation 2006/585/EC 6 (a) and (c) of 24 August 2006 of the European Council on the digitalization and on-line availability of cultural materials and cultural preserve.