

Data protection statement / Privacy statement on processing personal data in the Orphan Works Database

Protecting your privacy is of the utmost importance to the European Union Intellectual Property Office ('EUIPO' or 'us' or 'the controller'). The Office is committed to respecting and protecting your personal data and ensuring your rights as a data subject. All data of a personal nature that identifies you directly or indirectly will be handled fairly, lawfully and with due care.

This processing operation is subject to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

The information in this communication is given pursuant to Articles 15 and 16 of Regulation (EU) 2018/1725.

1. What is the nature and the purpose of the processing operation?

Personal data is processed for the following purpose(s):

- To enable the correct functioning of the Orphan Works Database, a single publicly accessible online database established and managed by the Office under the mandate of Directive 2012/28/EU to develop a collaboration network to exchange information on orphan works between all the Member States.

Personal data will not be used for any automated decision making, including profiling.

2. What personal data do we process?

The categories/types of personal data processed are as follows:

- **Identified authors:** the database stores and processes personal data (names and surnames) of natural persons related with orphan works, namely identified rights holders, such as authors, co-authors, performers, phonogram producers, producers of the first fixation of a film, co-producers, publishers, broadcasters, translators, etc.
- **Claimants:** in addition, the database stores and processes personal data (names, surnames, addresses, email addresses, telephone numbers) of potential rights holders seeking to file a claim to change the status of an orphan work. Such information will not be disclosed to the public and will only be made available to beneficiary organisations using the orphan works (libraries, museums, archives, broadcasting organisations, etc.).

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- **Beneficiary organisations:** the database also contains personal data (names, surnames, addresses, email addresses, telephone numbers) of individual users that log in to the Orphan Works Database with the appropriate credentials, such as representatives of beneficiary organisations and Competent National Authorities. Personal data of individual users of the database will not be disclosed to the public.
- **New record:** when filling in a new record for an orphan work, the user may, when such information is available, provide personal data, such as the name and surname of the identified rights holder. If the rights holder is anonymous, the user may specify this in the database. If the rights holder has been identified and located, and has authorised the use of the work in relation to the rights he or she holds (applicable for partial orphan works), the user will specify 'identified and located' in the appropriate field. The user will be informed of the success of the orphan work record's submission via an automatic notification generated by the database. Once the information is forwarded by the Competent National Authority, an automatic email notification will be sent to the user.

In all processes related to orphan work records, such as updating an orphan work record, informing of potential errors in a record or requesting a status change of a record, the system will the user information via automatic email notifications. The Office is not able to record or modify any data contained in the database, which can only be done by beneficiaries of the orphan works in the Member States.

3. Who is responsible for processing the data?

Personal data processing is the responsibility of the Observatory director, acting as the delegated EUIPO data controller.

4. Who has access to your personal data and to whom is it disclosed?

Personal data is disclosed to the following recipients:

- **Beneficiary organisations:** beneficiary organisations using the Orphan Works Database (libraries, museums, archives, broadcasting organisations, etc.) will have access to personal data stored in the Orphan Works Database. The list of beneficiary organisations using the Orphan Works Database is stored in EUIPO secure servers, accessible only to the administrator of the tool.

Information about identified and located rights holders who have authorised the use of a work in relation to rights they hold (partial orphan works) will be made available to the relevant beneficiary organisations but not to the general public. This data will be hidden from the general public and replaced by the phrase 'identified and located'.

- **General public:** the general public will have access to personal data (such as names and surnames) of rights holders of orphan works which have been identified but not located.

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Personal data is transferred to beneficiary organisations in Norway, Iceland and Lichtenstein (EEA countries).

5. How do we protect and safeguard your information?

We take appropriate technical and organisational measures to safeguard and protect your personal data from accidental or unlawful destruction, loss, alteration and unauthorised disclosure or access.

The following security measures are in place in the database:

- a CAPTCHA test is implemented for public forms, for example the status change claims or the beneficiary organisation user registration form;
- users of the database have role-based access, so a specific user password is needed to access the database and each user can only see the functions associated with their role. E-records are held securely to safeguard the confidentiality and privacy of the data therein;
- SSL (Secured Sockets Layer) / HTTPS;
- an EUIPO username and password are required to access the Office network and systems;
- role-based authentication and authorisation;
- authentication and authorisation at server level, no anonymous access allowed;
- the server is located in the Data Processing Centre to ensure its physical protection;
- the logical security of the servers has been hardened;
- network security is configured to prevent external threats from accessing the servers.

6. How can you access your personal information and, if necessary, correct it? How can you receive your data? How can you request that your personal data be erased, or restrict or object to its processing?

You have the right to access, rectify, erase and receive your personal data, as well as restrict its processing and object to the same, as provided in Articles 17 to 24 of Regulation (EU) 2018/1725.

If you would like to exercise any of these rights, please send a written query explicitly stating your request to the delegated data controller, the Observatory director.

Your request will be answered without undue delay, and in any event within 1 month of receipt of the request. However, according to Article 14(3) of Regulation (EU) 2018/1725 this period may be extended by up to 2 months where necessary, taking into account the complexity and number of requests. The Office will inform you of any such extension within 1 month of receipt of the request, together with the reasons for the delay.

7. What is the legal basis for processing your data?

Personal data is processed in accordance with Article 5(1)(a) of Regulation (EU) 2018/1725, which states that 'processing is necessary for the performance of a task carried

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out in the public interest or in the exercise of official authority vested in the Union institution or body’.

Personal data is collected and processed in accordance the following legal instrument:

- Article 3 of Directive 2012/28/EU, which states that the EUIPO is responsible for the establishment and management of a single publicly accessible online database of orphan works.

8. How long can data be kept?

Since the purpose of Directive 2012/28/EU is to facilitate rights holders’ identification concerning apparently orphaned works, personal data related to orphan works will be stored in the database for an unlimited period of time.

When the status of an orphan work is changed to ‘not orphan’ or ‘partial orphan’, the personal data of identified and located rights holders of this work will not be displayed to the general public. The retention period of data for works declared as ‘not orphans’ will be a minimum of 70 years from entry into the database. The extinction of the retention period will be decided by the beneficiary organisation that controls the data.

In the event of a formal appeal, all data held at the time of the appeal will be retained until the completion of the appeal process.

9. Contact information

Should you have any queries on the processing of your personal data, please address them to the data controller, the director of the European Observatory on Infringements of Intellectual Property Rights, at: DPOexternalusers@euipo.europa.eu

You may also consult the EUIPO data protection officer (DPO) at: DataProtectionOfficer@euipo.europa.eu.

Forms of recourse

If your request has not been responded to adequately by the data controller and/or DPO, you can lodge a complaint with the European Data Protection Supervisor at: edps@edps.europa.eu.