

# TIMBUS



TIMELESS BUSINESS

## Digital Libraries

### Copyright Protection of Text Documents, Orphan Works and Usability in Libraries

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<http://creativecommons.org/licenses/?lang=en>



## ■ When is a text document copyright protected?

Are the text documents protected by copyright?

*Choose one of the following answers*

Yes

No

I don't know

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\*

Is the text you are using an author's intellectual, individual creation?



Author's own intellectual creation





## ■ How long is a work copyright protected?

 Has the term of protection expired?

Explanation: In Europe, the duration of copyright protection lasts 70 years after the death of the right holder.

Yes  No

*70 years post mortem auctoris.*





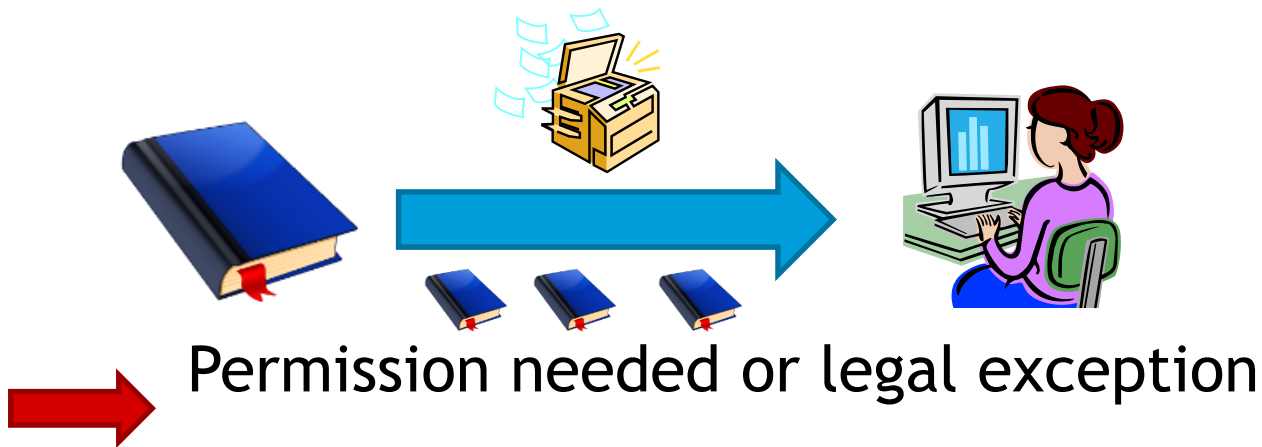
- **Which exploitation rights are obtained ?**
  - Right of reproduction
  - Right of making available to the public
  - Right of distribution and exhibition
  - Right of editing and transformation
  - Right to perform and report





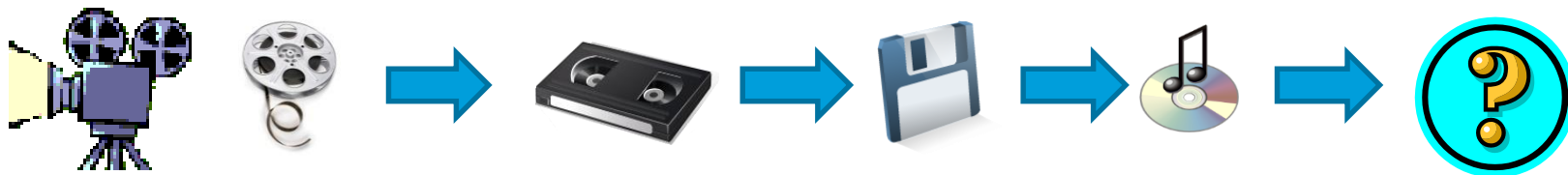
- Which rights are relevant with regard to digital libraries ?

- Digitization
  - Right of reproduction





- Which rights are necessary for digital preservation ?



## Migration

- Right of adaption
- Right of alteration




## ■ How can necessary rights be acquired ?

■ From the rightholder

■ Assignment of rights   License 

■ License

■ Exclusive - non exclusive

■ Temporarily - unlimited 

# Orphan Works (1)

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## ■ What is an *Orphan Work*?

An *Orphan Work* is a **copyright protected** work whose right-holder is **unknown** or **uncontactable**.



No rightholder can be identified to obtain **permission** to use the work; works are legally **not** available.



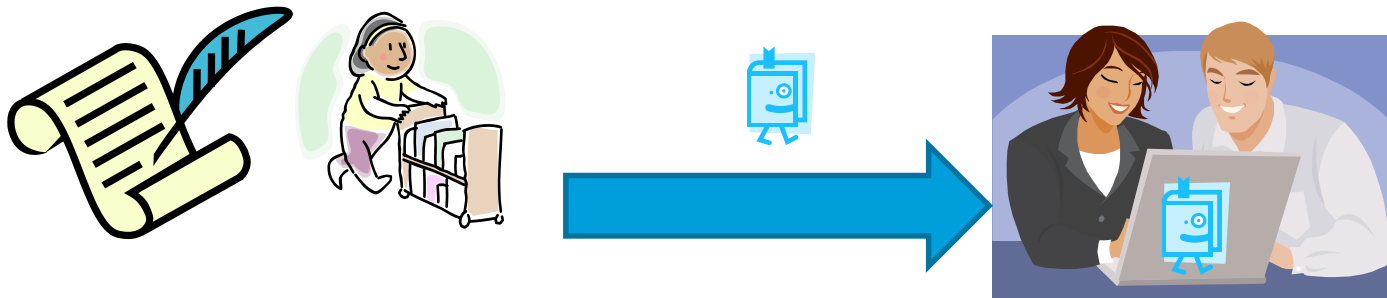
Cultural inheritance






# Orphan Works (2)

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- Libraries try to fight dilapidation of cultural assets.
  - digitization safes artefacts from irreversable loss due to age and state.
  - digitization is a form of reproduction.
  - Unconsented digitization infringes the **right of reproduction**. 

 How can digitalisation be made legally admissible?

# Orphan Works (3)

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Directive 2012/29/EU on certain permitted uses of orphan works allows certain institutions the use of orphan works if

a **diligent search** has been conducted and not yielded the identity of the copyright holder(s).

 Work considered orphan across the EU (mutual recognition).



- **What does *Diligent Search* mean?**
  - Carried out in **good faith**;
  - Consultance of **appropriate sources**;
  - Carried out in the country of first publication/  
broadcast;
  - Commercial enterprises can be hired to carry out  
the search by **public private partnerships**.



## ■ Which organizations are privileged to use orphans ?

- Publicly accessible libraries
- Educational establishments
- Museums
- Archives
- Film or audio heritage institutions

 Beneficiary organisations



- How can *Orphan Works* be used?
  - Use in accordance to public interest mission
  - **Right of making available** within the meaning of Art. 3 of Directive 2001/29/EG
  - **Right of reproduction** within the meaning of Art. 2 of Directive 2001/29/EG for the purposes of
    - digitization,
    - making available,
    - indexing,
    - cataloguing,
    - preservation or restoration.



- **What works are covered by the Directive ?**
  - Printed works, e.g. books, journals, magazines, newspapers;
  - Cinematographic or audio- visual works;
  - Phonograms;
  - Works embedded/incorporated in other works or phonograms, e.g. photos in a book.



# Orphan Works (8)

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- The Directive is implemented into German Copyright Law (UrhG) and will come into force on 29. October 2014.
  - § 61 UrhG names privileged institutions, permitted types of use and covered types of works.
  - §§ 61a-d UrhG contain further requirements of the Directive.



# Orphan Works (9)

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- § 61b UrhG contains the injunction of omission in case the rightholder has been identified.
- The Directive only contains the necessity of a possibility for the rightholder to stop the use as orphan work.







## How can digitized works be used in libraries?

- Art. 2 Directive 2001/29/EC regulates the **right of reproduction**.
- Art. 3 Directive 2001/29/EC regulates the **right of communication to the public** of works and the **right of making available** other subject-matter.
- Art. 5 III lit. (n) Directive 2001/29/EC provides **limitations and exceptions** to these rights.

# Electronic Display in Libraries (1)

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- Art. 5 III lit. n Directive 2001/29/EC states:  
“Member States may provide for exceptions or limitations (...) in the following cases: (...) use by communication or making available, for the purpose of research or private study, to individual members of the public by **dedicated terminals** on the premises of establishments referred to in paragraph 2 (c) of works and other subject-matter **not subject to purchase or licensing terms** which are **contained in their collections.**”





## Regulations in German Copyright Law (UrhG)

- § 52b UrhG implements Art. 5 III lit. (n) Directive 2001/29/EC
  - Includes right of making available;
  - Digitization as act of reproduction is not mentioned;

 Is the library permitted to **digitize analogue works?**



## Litigation: Publishing House vs. German University

“(...) works and other subject-matter (...) **contained in their collections**”


 Purpose of §52b UrhG: Same usability of works at dedicated electronic terminals.

 Editorial oversight



Litigation: Publishing House vs. German University

“(...) works and other subject-matter (...) **subject to purchase and licensing terms**”

 Is the offer of a contract sufficient?

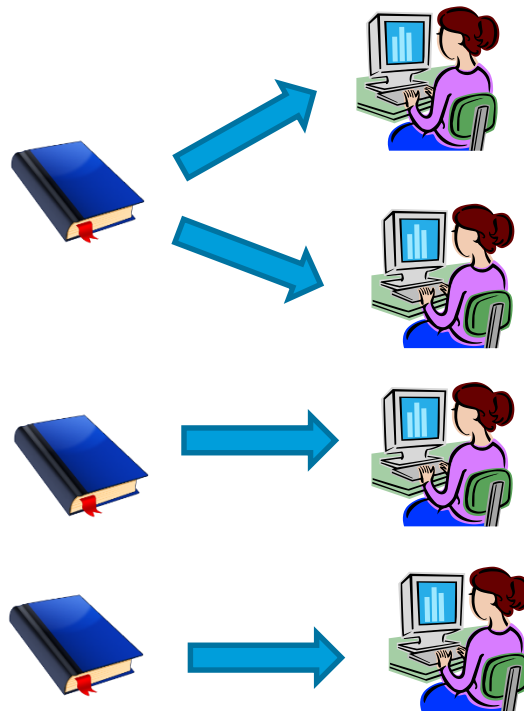
# Electronic Display in Libraries (5)

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## Litigation: Publishing House vs. German University

How many versions can be displayed electronically?

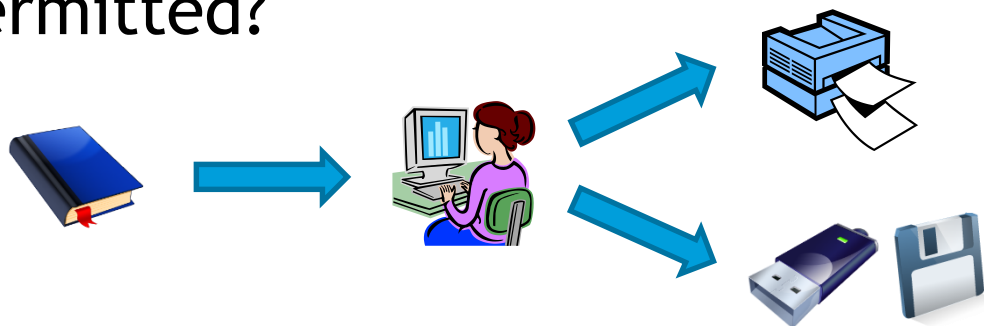


**Inadmissible  
Reproduction**





- Besides displaying and reading, which further use is permitted?



 Is printing and storing covered by Art. III lit. (n) Directive 2001/29/EC ?

 Advocate General: Printing and storage is not covered by Art. 5 III lit. (n) Directive 2001/29/EC.



## ■ Art. 5 III lit. (a) Directive 2001/29/EC:

”Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases:

(a) use for the sole purpose of **illustration** for **teaching** or **scientific research**, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the **non-commercial** purpose to be achieved.“

## ■ § 53a UrhG:

- Authorization of public libraries to deliver copies of articles or a part of a work upon request;
- Only for private use;
- Difficult for libraries to control;
- Not applicable for use for scientific research.





## The Legalities Lifecycle Management (LLM)

Is the database protected by copyright?

Choose one of the following answers

- Yes
- No
- I don't know. When is a database copyright protected?

Do you have a licence which allows you to reproduce, alter or migrate the database?

Choose one of the following answers

- Yes
- No
- Art. 6 [Database-Directive](#): Exception applicable?

Do you want to extract or re-use substantial parts of the database?

Choose one of the following answers

- Yes
- No
- I don't know. What counts as a substantial part of the database?



**Visit our LLM-Tool!**

<https://timbus.teco.edu/survey/index.php?sid=42241&lang=en>



**Avoid infringing copyright!**



# Thank you for your attention!