



Orphan Works at Theatre Library and Information Centres: Assessing Librarians' Perceptions and Management in Spain



Silvia Cobo Serrano^{a,*}, Rosario Arquero Avilés^b, Gonzalo Marco Cuenca^c, Brenda Siso Calvo^b

^a Library Information Science, Spain

^b Department of Library and Information Science, Complutense University, Spain

^c Department of Documentation Science and History of Science, University of Zaragoza, Spain

ARTICLE INFO

Keywords:

Orphan works
Digitization
Audiovisual materials
Photography
Copyright
Specialized libraries
Theatre
Spain

ABSTRACT

Currently, libraries and other information services are facing new professional challenges in relation to digitization policies and orphan works after the publication of European Directive 2012/28/EU on certain permitted uses of orphan works and Spanish Royal Decree 224/2016. This paper aims to analyse how Spanish library and information centres specialising in theatre and performing arts meet users' textual and non-textual information needs, by respecting copyright issues and being involved in a dynamic and digital environment. For this purpose, an online questionnaire, which was used as a methodological tool, was sent to library directors in February 2018. At the same time, some research questions based on orphan works and digitisation approaches are discussed in the paper, specifically in reference to graphic and audiovisual materials.

Introduction

In accordance with the [European Commission's \(2016, p. 6\)](#) progress report, “digital technologies and the internet bring unprecedented opportunities to access cultural material for leisure, study or work, reaching out to broader audiences, engaging in new user experiences and reusing it to develop learning and educational content, documentaries, tourism applications, games and other innovative applications”. This report, published in June 2016 and based on the implementation of Commission Recommendation of 27 October 2011 on digitization, online access and digital preservation, provided a clear picture of the policies and coordinating activities required to access cultural materials. Some approaches taken along these lines were focused on planning and monitoring digitalization, public-private partnerships, structural funding, and public domain materials.

Additionally, the creation of a digital single market strategy for Europe also highlighted the importance of online accessibility by stating that this strategy “is one in which the free movement of goods, persons, services and capital is ensured and where individuals and businesses can seamlessly access and exercise online activities under conditions of fair competition, and a high level of consumer and personal data protection, irrespective of their nationality or place of residence” ([European Commission, 2015, p. 3](#)). In this regard, providing better online access for consumers across Europe entails considering a

copyright framework to make cultural heritage available online.

In this context, obtaining permission for copyrighted materials in scholarly communications and research may be a complicated process for Faculty, students and researchers who need to be assisted by their academic or specialist librarians. Despite providing appropriate library services on the use of copyright-protected materials, in many cases the impossibility of identifying and locating copyright holders may emerge in the declaration of orphan works and the non-use of the materials. Nonetheless, the support and interest of the European Commission in making online content available allowed the adoption of European Directive 2012/28/EU on certain permitted uses on orphan works; this “will help in digitising and bringing copyrighted content online, now that its implementation has reached cruise speed in the vast majority of Member States” ([European Parliament, 2012, p. 7–8](#)). Certainly, the implementation of this Directive in Spanish library and information centres specialized in the performing arts is highly relevant for the following reasons:

- Firstly, a large number of professionals (directors, choreographers, actors, photographers, producers, etc.) participate in theatrical works and other performing activities, which is in proportion to the increasing number of copyright owners.
- Secondly, one of the library services most used at theatre libraries is the loan of audiovisual materials. The Theatre Documentation

* Corresponding author.

E-mail addresses: s.cobo@ucm.es (S.C. Serrano), carquero@ccinf.ucm.es (R.A. Avilés), gmarco@unizar.es (G.M. Cuenca), msiso@ucm.es (B.S. Calvo).

The screenshot shows the 'Teatroteca' website interface. At the top, there is a search bar with 'Medea' entered and buttons for 'Búsqueda' and 'Avanzada'. Below the search bar, a breadcrumb trail reads 'Inicio > Resultados > Ficha'. The main content area features a large image of a woman in a black dress on stage, with the title 'Medea' and author information '"Autor: Séneca ; Eurípides' next to it. There are two prominent buttons: 'Prestar' and 'Vista previa'. Below these, it shows '0 comentarios' and options to 'Añadir Comentario' and 'Añadir a una lista'. A statistics bar indicates '28 visitas' and 'Prestado 15 veces', followed by a 'Valoración media' of five stars. Below this, there are two sections: 'Otros usuarios también vieron' and 'Otros usuarios también leyeron', each displaying four related items with their respective images and titles. At the bottom, there is a 'Descripción' section with a 'Comentarios (0)' tab, and a metadata table.

| Descripción | Comentarios (0) |
|---------------|--|
| Autor | "Autor: Séneca ; Eurípides Versión: Lima, Andrés Adaptador: Lima, Andrés Música de: Manresa, Jaume" |
| Título | Medea |

Fig. 1. Bibliographic record of “Medea”.
Source: <http://teatroteca.teatro.es/opac/#fichaResultados>.

Centre (National Institute of Performing Arts and Music, Spain) offers these copyright-protected play performances through “Teatroteca”, a non-commercial electronic lending platform that allows users to access and borrow works in digital format using multiple devices: personal computers, laptops, smartphones and tablets. “Teatroteca” is currently one of the most highly-valued library services as users may access hundreds of theatrical works after logging into their library account (see Fig. 1).

- Thirdly, the Spanish performing tradition is widely known. Playwrights such as Lope de Vega, Calderón de la Barca, Tirso de Molina, Miguel de Cervantes or García Lorca were prominent authors in Europe along with Shakespeare, Molière or Brecht.

This paper aims to analyse how theatrical library and information centres meet users' textual and non-textual information needs in Spain, in the light of the European Directive and managing institutional policies on copyrighted materials.

Literature review

The role of academic and specialist libraries is increasingly larger in relation to the support, advice and copyright services that they provide to Faculty, students and researchers. Copyright clearance requires the use of appropriate sources both to identify and locate right holders, especially when copyrighted materials are orphan works. Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works stated:

“A work or a phonogram shall be considered an orphan work if none of the rightholders in that work or phonogram is identified or, even if one or more of them is identified, none is located despite a diligent search for the rightholders having been carried out and recorded” (European Parliament, 2012, L 299/9, Art. 2).

An orphan works assessment was undertaken in [Vuopala's \(2010\)](#) report to illustrate the scope of the problem with this issue, the time and effort involved in rights clearance. Of particular interest in the report is the identification of “considerable amounts of orphan works in collections of cultural institutions around Europe” after analysing many digitisation projects ([Vuopala, 2010](#), p. 4). It also briefly mentioned that photographs and audiovisual materials showed high percentages of being considered as orphan works. It may infer the necessity of listing national sources of information for these categories of works in order to help users identify and locate copyright owners.

Orphan work issues are directly argued in relation to mass digitization as cultural and government institutions are increasingly involved in digitization projects to disseminate cultural and creative expressions. However, the United States Copyright Office noticed that practical “obstacles to clearance are highly detrimental to a well-functioning copyright system in the twenty-first century” (2015, p. 105). Conclusive reflexions of the report reflected the importance of “providing legal certainty to users, establishing reliable mechanisms for the compensation of authors, and making vast numbers of long forgotten works available for the public good” (The [United States Copyright Office, 2015](#), p. 106).

In the field of academic research, the use of genealogical methods to locate rightholders is also presented. [Smith \(2015\)](#) demonstrated how online genealogical sources may be applied in academic libraries by describing different case studies. The paper highlighted that these research skills might be seen as a “value-added service that can support the institution's publication and instructional role, and that this service may reduce their institution's legal risk in using orphan works without obtaining explicit permissions” ([Smith, 2015](#), p. 284). The conflict of interests between copyright law and teaching activities was also noted by [Muriel Torrado and Fernández Molina \(2014\)](#) when analysing the role of academic libraries to support users' needs in digital education. Academic libraries and copyright is a topic covered by [Fernández-Molina, Moraes, and Guimarães \(2017\)](#) whose research was aimed at determining Brazilian academic librarians' knowledge of copyright and additional training requirements.

[Arquero Avilés and Marco Cuenca \(2016\)](#) meticulously examined the status of the declaration of orphan works in Europe. Their conclusions were reached after analysing the registers included in the European Database of Orphan Works, which was launched by the European Union Intellectual Property Office (commonly EUIPO). Located in Alicante, EUIPO “was created as a decentralised agency of the European Union to offer IP rights protection to businesses and innovators across the European Union (EU) and beyond” ([EUIPO, 2018a](#)). In their paper, [Arquero Avilés and Marco Cuenca \(2016\)](#) concluded that orphan works with more registers in the abovementioned database are audiovisual materials. Some interesting recommendations refer to the development of detailed procedures to execute diligent search processes more dynamically.

A recent technical report diagnosed state-of-the-art of orphan works in Europe ([Arquero Avilés, 2017](#)). This report is a result of the research carried out by the Observatory on Orphan Works and Diligent Search,

whose members belong to different Spanish universities (the Complutense University, the Carlos III University of Madrid, the University of Extremadura and University of Zaragoza) as well as cultural institutions (the Spanish Film Archive, TVE, the Complutense University Library, the University Rey Juan Carlos Library and the National Library of Spain, among others). The review of the report provided a big picture of the legal status of orphan works in 28 Member States and the transposition of the Directive 2012/28/EU. Among the objectives of the report, authors aimed to identify guidelines or procedures related to diligent search planning and execution processes; in other words, activities associated with the Library and Information Science field. A descriptive record is included for each Member State (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, the Netherlands, Poland, Portugal, Rumania, Slovakia, Slovenia, Spain, Sweden, United Kingdom) and a comparative study is based on the following criteria: country, category of work, beneficiary entity, language, place of publication and projects on orphan works (for example, FORWARD¹). Conclusions highlighted the existence of two types of Member States. On the one hand, those countries that have developed explicit legal procedures and sources to undertake a diligent search process for orphan works (Hungary and United Kingdom) and, on the other hand, Member States that reproduce sources referred to in Article 3 of the Directive 2012/28/EU. Similarly, sources listed for each category of work in the Member States are not uniform in terms of number and data provided to describe national sources.

These conclusions were also confirmed in the report produced by [Bertoni, Guerrieri, and Montagnani \(2017\)](#). As part of the project EnDOW (Enhancing access to 20th century cultural heritage through Distributed Orphan Works clearance), the report analysed conditions required to undertake a diligent search in seventeen European countries. For that purpose, a questionnaire was used as a methodological tool and sent to local experts. Evidence from data collected showed limited effectiveness of the Directive to foster a harmonized diligent search process which “highly depends on the number of sources that need to be consulted and their accessibility” ([Bertoni et al., 2017](#), executive summary).

Using a practical and empirical analysis to address the orphan works issue, [Schroff, Favale and Bertoni, \(2017, p. 286\)](#) used case studies from countries such as the United Kingdom, the Netherlands and Italy to discuss the “conditions under which a diligent search can feasibly be carried out”. In the paper, the authors aim to 1) determine requirements for diligent search processes, 2) identify authoritative sources and databases to be consulted and 3) assess how accessible they are.

Presenting a domestic viewpoint, [Juan and Luis \(2017\)](#) analysed the legal status of orphan works in Spain, considering the scope of the problem at national level and listing some disadvantages of orphan works. The author mentioned the restrictive regime of the current legal regulations by noting the high administrative workload this imposes on the beneficiaries (“libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations” ([European Parliament, 2012](#), Art. 1, L 299/8)). Among other disadvantages, the diligent search process is of particular interest. González San Juan addressed the issue mentioning difficulties in conducting the search, the time spent, and the lack of economic resources. Indeed, with regard to paying a compensation for using the works, fair compensation will “be determined by the Member State where the organisation [...] is established” ([European Parliament, 2012](#), L 299/7). According to the author, this general criterion may create a discriminatory situation among European copyright holders.

¹ Co-funded by the European Commission, FORWARD is led by the Cinémathèque Royale (Belgium) and its partners come from 13 European institutions ([Arquero Avilés, Marco Cuenca, Oliván, & Antonio, 2018](#)).

In summary, orphan works has been a general research topic in the field of Library and Information Science in recent decades; however, the present study is timely and significant considering that no research has been done on orphan works in specific library and information centres.

Methodology

Authors have used an online questionnaire to gather statistical and factual data. The research was conducted in Spain during the first semester of the 2018 academic year.

Participants are professionals working in different Spanish library and information centres focused on theatre and performing arts. These professionals were selected after consulting bibliographic and referential databases specialized in Library and Information Science to assess the state of the art; for example, Dialnet, LISA (Library and Information Science Abstract) and LISTA (Library and Information Science & Technology Abstract).

Other sources to identify theatrical information centres in Spain were also considered. The list of theatre institutions created by [Muñoz Cáliz \(2011\)](#) was consulted; the latter identified and mapped Spanish theatrical documentation centres. “[Guiarte \(2018\)](#)” is a highly relevant source for Spanish performing arts. It is a specialized directory in theatre and circus that lets users, performing arts professionals and researchers access more than 7000 registers. This Spanish database provides information concerning associations, theatre companies, library and information centres, acting schools, festivals, bookshops and calls for national prizes.

In order to address the objectives of the research, three representative theatre library and information centres were selected in Spain. They depend on different public levels: cultural institutions (Juan March Foundation²), regional administration (Centre of Documentation and Museum of Performing Arts, Institute del Teatre, Barcelona³) and state administration (Theatre Documentation Centre, National Institute of Performing Arts and Music, Madrid⁴). See [Table 1](#).

After discussing the most appropriate method to conduct the survey, the authors decided that an online questionnaire would encourage the research response rate as it may be completed by any institution at any time. As a data gathering tool, the questionnaire is a highly structured, direct communication method whose design may be customized in accordance with research requirements. In this case, the self-administered questionnaire, which was designed on an online survey platform, included closed-ended⁵ and open-ended questions. Generally, the questionnaire structure is included below:

Institutional polices and copyright:

1. Polices to access audiovisual and graphic copyrighted materials online.
2. Orphan works case studies in library and information services.
3. Management of orphan works.
4. Technical requirements written.

Diligent search:

5. Sources of information to carry out diligent search.
6. Cost of diligent search procedures.

²The Juan March Foundation is a Spanish cultural heritage institution whose library is focused on the contemporary Spanish music and theatre.

³The Centre of Documentation and Museum of Performing Arts is a reference cultural institution in Catalonia whose aim is to preserve the memory of the performing arts.

⁴The Theatre Documentation Centre is a public institution which depends on the Ministry of Culture and Sport of Spain. Its goal is to disseminate and preserve the Spanish scenic heritage.

⁵Closed-ended questions are dichotomous questions based on yes/no answers.

Table 1
Theatrical information centres in Spain.

| Institution | Website and contact |
|---|---|
| Centre of Documentation and Museum of Performing Arts (Institute del Teatre, Barcelona) | http://www.cdmae.cat/ Email: biblioteca.itb@institutdelteatre.cat |
| Juan March Foundation (Madrid) | https://www.march.es/bibliotecas/ Email: biblioteca@march.es |
| Theatre Documentation Centre (National Institute of Performing Arts and Music, Madrid) | http://teatro.es/ http://bibliotecadct.mcu.es Email: biblioteca.cdt@inaem.mecd.es |

Rightholders:

7. Rights claimed by rightholders.
8. Rightholders' claim procedures.
9. Orphan works declared in your collections.
10. LIS and non-LIS professionals working together on orphan works issues.

European and Spanish legislation on orphan works:

11. Implementation of the Directive 2012/28/EU.
12. National legislation on orphan works in Spain.
13. Professional opinion on orphan works.
14. Disadvantages in diligent search processes.
15. Orphan works identification, management and challenges.

The validity of the questionnaire was confirmed in a pre-test trial to ensure comprehension and the logical order of the questions. For this purpose, Faculty staff and students interested in performing arts participated in the trial. After this pre-implementation process, an email was sent out to participants with a link to the questionnaire. The email included a research statement informing professionals that their responses and professional data would be recorded for academic purposes.

Findings and discussion

Institutional polices and copyright

As regards institutional polices and copyright issues, participants indicated the different strategies adopted in their institution to let users access online audiovisual and graphic copyrighted materials. For example, small-size and low-resolution photographs are published in the library online access catalogue. If users need some of these photographs, they will have to pay a fee for copyright clearance. However, if the photograph is an orphan work, it will be only used for research purposes. Additionally, participants stated that they frequently work with Spanish intellectual property rights management entities which could be classified as follows in [Table 2](#):

Participants noted that copyrighted materials could have restricted access and only be available through library terminals.

When specifically asked about the identification of works that may be considered orphan works in their collections, all library staff agreed that a large number of works were identified as such. The management of these materials in library and information centres specialising in theatre was carried out using bibliographic catalogues, contacting intellectual property rights management entities or looking for copyright holders in the catalogue of authorities in the National Library of Spain. The results also showed that some orphan works are available from the OPAC (Online Public Access Catalogue), although the versions offered

Table 2
Intellectual property rights management entities classification.

| | |
|--|---|
| Intellectual property rights management entities for AUTHORS: | SGAE (General Society of Authors and Editors) CEDRO (Spanish Centre for Reproduction Rights) VEGAP (Visual Management Entity for the Plastic Arts) DAMA (Audio-visual Media Copyright) |
| Intellectual property rights management entities for PERFORMERS: | AIE (Performers Management Society of Spain) AISGE (Performers Management Society) |
| Intellectual property rights management entities for PRODUCERS: | AGEDI (Intellectual Rights Management Association) EGEDA (Audiovisuals Producers Rights Management Entity) |

Source: <https://www.mecd.gob.es/cultura-mecd/en/areas-cultura/propiedad-intelectual/la-propiedad-intelectual/preguntas-mas-frecuentes/entidades-de-gestion.html>

are low resolution and are not suitable for reproduction anywhere else.

Despite the need to ensure that a diligent search is carried out by consulting the appropriate sources to identify orphan works, no library or information centre has produced a manual with specific instructions to identify works and locate their copyright holders. Essentially, this uniform response reveals a lack of economic and human resources to undertake this task, as a technical requirement guidebook is highly recommended when working with copyright intellectual property.

Diligent search

According to the European Directive 2012, “a diligent search is carried out in good faith in respect of each work or other protected subject-matter, by consulting the appropriate sources for the category of works and other protected subject-matter in question” (European Parliament, 2012, Art. 3.1, L 299/9). In this sense, library staff must also be aware of the sources allowed for each copyright-protected work as these sources “shall be determined by each Member State, in consultation with rightholders and users” (European Parliament, 2012, Art. 3.2, L 299/9).

At this point and based on the Directive (L 299/12), at least the relevant sources listed in the Annex for audiovisual works and phonograms are the following:

- Legal deposit;
- The producers' associations;
- Databases of film or audio heritage institutions and national libraries;
- Databases with relevant standards and identifiers such as ISAN (for audiovisual materials), ISWC (for musical works) and ISRC (in the case of phonograms);
- The databases of the relevant collecting societies;
- Credits and other information appearing on the work's packaging;
- Databases of other associations which represent rightholders.

Once these concerns on diligent search are defined, the second section of the questionnaire focused on diligent search procedure and how to execute appropriate and documented diligent search processes. For this purpose, two main questions were included in the questionnaire.

Firstly, and considering economic and human resources at the aforementioned library and information centres in Spain, it was generally asserted that institutions could not undertake a diligent search process using different and appropriate sources of information to identify orphan works. There is currently a lack of staff and economic resources at all Spanish government levels and this makes it difficult to implement the strategic and operational planning of library management. However, occasional diligent searches could be carried out if they were not too time consuming and if the staff assisted users by providing effective library services.

Results also showed that the cost of a diligent search procedure had not yet been estimated, which shows that orphan works decisions have not been made or addressed strategically to disseminate cultural

heritage in Spain. Currently, libraries and documentation centres work with tight budgets that do not usually include items for diligent search projects. In fact, in some cases staff costs consume nearly 50% of the library budget.

Rightholders

Based on the Directive, rightholders may put an end to orphan work status of those works which are included in the Orphan Works Database. This database includes a wide range of works “contained in the collections of publicly accessible libraries, educational establishments and museums, as well as archives, film or audio heritage institutions and public-service broadcasting organisations established in the Member States” (EUIPO, 2018b).

As can be seen in Fig. 2, the Orphan Works Database allows rightholders to search for orphan works using different search criteria, which are divided into seven main groups: (1) orphan works general information, (2) beneficiary organisation information, (3) publication information, (4) International Standard Number (ISN), (5) rightholders information, (6) work use, (7) quick search.

Launched by the European Union Intellectual Property Office (EUIPO) and carefully analysed by Arquero Avilés and Marco Cuenca (2016), this database can be considered a harmonized and transparent online access tool. For the purpose of this study, the questionnaire did not include questions related to the database. Questions were aimed at claim procedures or orphan works status or declaration.

Responses also revealed that rightholders have made no claims regarding their rights over works considered orphan works, and claim procedures have not been documented for that purpose. Similarly, participants have neither officially declared materials as orphan works nor registered diligent search procedures.

One of the major themes that emerged from the questionnaire highlighted the importance of working with non-LIS professionals to deal with the challenges and practical obstacles posed by orphan works. Participants stated that this non-LIS network is highly recommended when staff provides information services based on copyright and intellectual property issues. In this regard, library staff stated that some meetings with government authorities have taken place to address orphan works issues in Spain in accordance with European legislation. Indeed, it was noted that library and information centres try to work closely with intellectual property rights management entities to locate members of theatre companies who can act as photographers occasionally. The complexity of, first, identifying and, second, locating copyright holders in the performing arts field requires that LIS professionals share information resources and indexes within a library network. Additionally, participants stated that some of them have taken different courses on copyright issues and attended conferences on intellectual property in digital environments. In this sense, researching to minimize risks for copyrighted orphan works and increase digitization projects is also considered to help LIS professionals. One of the most relevant examples is the Hansen (2016) report, which was intended to help digitizers manage risks when providing open access to orphan works. With a geographic framework located in the Unites States, the

The screenshot shows the EUIPO Orphan Works Database advanced search interface. At the top, the EUIPO logo and tagline 'Promoting and supporting Intellectual property value' are visible. A navigation menu includes 'Home', 'About the Observatory', 'Intellectual property for...', 'Facts, Figures and Case Law', and 'News & events'. The main content area is titled 'Orphan Works Database' and features a sidebar with search criteria categories: 'Orphan Works' (File number, Identifier, Title of work, Description, Category of work, Competent national authority), 'Beneficiary Organisation Information' (Organisation, Organisation country), 'Publication Information' (Publication / broadcast / production country, Unpublished / Not broadcast, Publication dates, Publisher / broadcaster / Producer Name, Publication language), 'International Standard Number (ISN)' (ISN, ISN type), 'Right Holder Information' (Right holder, Right holder status, Right holder types), 'Work Use' (Project), and 'Quick Search' (Quick search). The central 'Advanced search criteria' section includes a 'Work type' filter with 'Main Work' and 'Embedded Works' checked, and search fields for 'Title of work' and 'Description' with 'contains' operators. A 'Search' button and a 'Basic Search' button are also present. A notification bar at the bottom indicates the search criteria used: 'Search for Orphan Work with: Work type is Main Work or Embedded Works'.

Fig. 2. Orphan Works Database advanced search.

Source: <https://euiipo.europa.eu/orphanworks/#search/advanced>.

report analysed current practices, legal defences and risk management strategies.

European and Spanish legislation on orphan works

A final section involved reflecting on and thinking about European legislation on orphan works and assessing whether Spanish transposition has had a beneficial effect on cultural institutions. In this regard, the dissemination of the implementation of Directive 2012/28/EU on certain permitted uses of orphan works has made the majority of the participants aware of the European Commission's commitment to

disseminating cultural heritage online (see Fig. 3).

However, it may be deduced that few actions have been taken by national governments to provide information on the benefits of the new European Directive to the entities whose materials could be orphaned, specifically all library and information centres. According to the Directive, these materials are explicitly: “works published in the form of books, journals, newspapers, magazines or other writings contained in the collections of publicly accessible libraries, educational establishments or museums as well as in the collections of archives or of film or audio heritage institutions” (European Parliament, 2012, Art. 1, 2a).

With reference to the Spanish context, some participants stated that

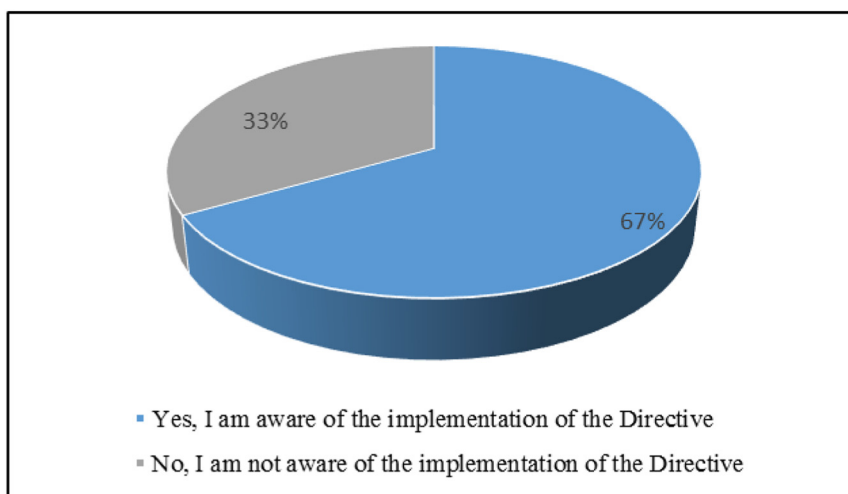


Fig. 3. Grade of implementation of the Directive 2012/28/EU on certain permitted uses of orphan works.

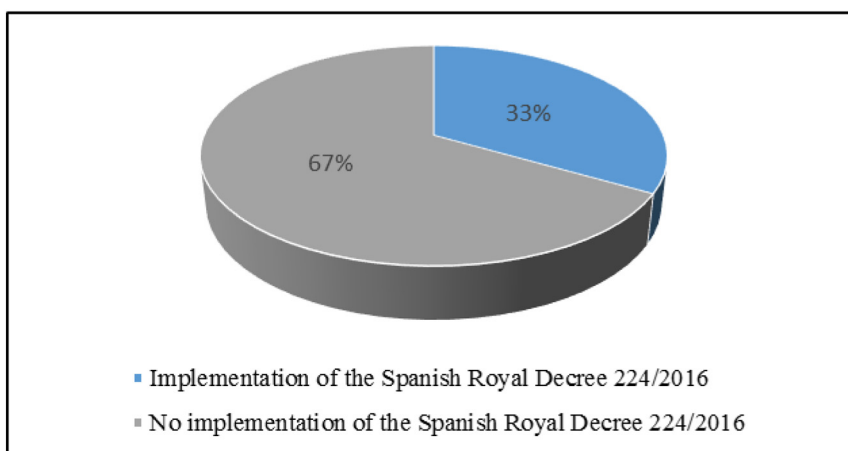


Fig. 4. Grade of implementation of the Spanish Royal Decree 224/2016.

permitted uses of orphan works had not been implemented yet in their library and information centres (see Fig. 4). Although the transposition was scheduled for 29 October 2014, its Spanish implementation came into force in June 2016. Spanish Royal Decree 224/2016 is based on a large number of legislative and thematic considerations and specific articles on the issue (such as the scope of orphan works, materials, the definition of diligent search, mutual recognition of orphan work status, the end of orphan work status and permitted uses).

Results also showed that participants are not enthusiastic about the legislative actions taken. Making better decisions on sensitive issues such as copyright and intellectual property will overcome practical obstacles in diligent search processes to obtain permission and disseminate cultural and artistic expressions. In participants' words, the European Directive and Spanish Royal Decree 224/2016 address the matter in a general way. Specific procedures and sources are neither included in the European Directive nor in the Spanish Royal Decree.

Apart from this consideration, participants' perceptions of the disadvantages that a diligent search process may present mainly refer to the time and human resources needed to address orphan works identification, management and challenges. For these three purposes, library staff finally mentioned that LIS professionals should work with non-LIS professionals, specifically in reference to legal issues. Contacting intellectual property experts to address queries, working with legal advisers and being kept up to date on copyright, intellectual property and orphan works issues are undoubtedly participants' most noteworthy recommendations for this study.

Conclusions

A literature review combined with a survey to analyse the current situation of orphan works in theatre library and information centres in Spain may help librarians or library teams understand the importance of improving government policies and strategies to deal with issues related to copyright-protected works.

Although there seems to be a general consensus to reduce the number of orphan works and increase digitization projects, there is a lack of leadership to actively help library and information centres carry out effective diligent search processes. This lack of institutional and government commitment has a detrimental effect on day-to-day activity in library and information centres.

The engagement of library staff to make cultural heritage available online is undeniable; however, Spanish government institutions do not provide uniform guidelines to carry out diligent search processes.

It is clear that more practical and methodological work is needed, and this must include an open and continuous dialogue between, for example, library staff members and legal professionals. Additionally, solutions that have been adopted internationally for orphan works should be examined, as digitizing public domain works is not the only way to provide online access.

Funding acknowledgement

This work was supported by IdeaLab Research Group (The

Complutense University of Madrid).

Acknowledgements

Authors would like to thank participants for their collaboration and interest in the research.

References

- Arquero Avilés, R. (2017). Estudio comparativo y análisis de la situación actual de las obras huérfanas en Europa. *Informe científico-técnico* <https://www.researchgate.net/publication/318085151/download>, Accessed date: 18 October 2012.
- Arquero Avilés, R., & Marco Cuenca, G. (2016). Análisis del estado de la declaración de obras huérfanas en Europa = Analysis of the status of the declaration of orphan works in Europe. *Revista General de Información y Documentación*, 26(2), 365–385.
- Arquero Avilés, R., Marco Cuenca, G., Oliván, S., & Antonio, J. (2018). Buenas prácticas en la declaración de obras huérfanas en Europa = Good practices in the declaration of orphan Works in Europe. *Ibersid*, 12(1), 13–25.
- Bertoni, A., Guerrieri, F., & Montagnani, L. (2017). Requirements for diligent search in 20 European countries. Report 2. <http://diligentsearch.eu/resources/>, Accessed date: 18 October 2012.
- EUIPO (2018a). European union intellectual property office. <https://euipo.europa.eu/ohimportal/en/>, Accessed date: 18 October 2012.
- EUIPO (2018b). Orphan works database. <https://euipo.europa.eu/ohimportal/es/web/observatory/orphan-works-db>, Accessed date: 18 October 2012.
- European Commission (2015). Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: A digital single market strategy for Europe. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0192&from=EN>, Accessed date: 18 October 2012.
- European Commission (2016). Digitisation, online accessibility and digital preservation: Report on the implementation of commission recommendation 2011/711/EU: 2013–2015. http://ec.europa.eu/information_society/newsroom/image/document/2016-43/2013-2015_progress_report_18528.pdf, Accessed date: 18 October 2012.
- European Parliament (2012). Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works. *Official Journal of the European Union*, L 299 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0028&from=EN>, Accessed date: 18 October 2012.
- Fernández-Molina, J.-C., Moraes, J. B. E., & Guimarães, J. A. C. (2017). Academic libraries and copyright: Do librarians really have the required knowledge? *College and Research Libraries*, 78(2), 241–259.
- Guiarte (2018). <http://teatro.es/guiarte>, Accessed date: 18 October 2012.
- Hansen, D. (2016). In K. K. Courtney, & P. Suber (Eds.). *Digitizing orphan works: legal strategies to reduce risks for open access to copyrighted orphan works* Harvard Library <https://dash.harvard.edu/handle/1/27840430>, Accessed date: 18 October 2012.
- Juan, G. S., & Luis, J. (2017). Régimen jurídico de las obras huérfanas en España = Legal status of orphan works in Spain. *Ibersid*, 11(2), 35–40.
- Muñoz Cáliz, B. (2011). *Mapa de la documentación teatral en España*. Madrid: Centro de Documentación Teatral.
- Muriel Torrado, E., & Fernández Molina, J. C. (2014). Enseñanza digital versus derechos de autor: el papel de la biblioteca universitaria en apoyo de profesores y alumnos = E-learning vs. Copyright: the role of the university library in support of teachers and students. *Encontros Bibli*, 19(39), 205–226.
- Schroff, S., Favale, M., & Bertoni, A. (2017). The impossible quest – Problems with diligent search for orphan works. *IIC - International Review of Intellectual Property and Competition Law*, 48(3), 286–304.
- Smith, D. (2015). Finding parents for orphan works: Using genealogical methods to locate heirs for obtaining copyright permissions. *The Journal of Academic Librarianship*, 41, 280–284.
- United States Copyright Office (2015). Orphan works and mass digitization: a report of the register of copyrights. <https://www.copyright.gov/orphan/reports/orphan-works2015.pdf>, Accessed date: 18 October 2012.
- Vuopala, A. (2010). Assessment of the orphan works issue and costs for rights clearance. http://www.ace-film.eu/wp-content/uploads/2010/09/Copyright_anna_report-1.pdf, Accessed date: 18 October 2012.