

Образец за komentare - nacrt zakona o autorskom i srodnim pravima

Full name, or name of organisation / institution: EIFL (Electronic Information for Libraries), Mindaugo str. 23, LT-03214 Vilnius, Lithuania

Contact telephone: +370 5 2080409

E-mail: teresa.hackett@eifl.net

Title of the law to which your proposals and suggestions relate: Draft Law on Copyright and Related Rights (2026)

Date: 3 April 2026

1. General comments and suggestions regarding the Draft Law as a whole

EIFL (Electronic Information for Libraries) works with libraries to enable access to knowledge in developing and transition economy countries in Europe, Africa, Asia Pacific, and Latin America. In Serbia, EIFL partners with Serbian Library Consortium for Coordinated Acquisition (KoBSON).

We have reviewed the draft law as best we can using a machine translation. We have one general comment on the Marrakesh Treaty (below), and proposals for amendments on three topics: orphan works, public lending right and secondary publication right (see Part 2 below).

Implementation of the Marrakesh Treaty: EIFL congratulates the Intellectual Property Office of the Republic of Serbia for its proposed implementation of the Marrakesh Treaty for persons with print disabilities. Articles 65-67 are a complete and faithful transposition of the treaty including definitions, cross-border exchange of accessible format copies, record-keeping and authorized entities. We urge prompt enactment of the draft law so that Serbia can take advantage of its accession to the Marrakesh Treaty in 2020. In 2015, we published a Serbian translation of EIFL's popular guide, [СПОРАЗУМ ИЗ МАРАКЕША: EIFL ВОДИЧ ЗА БИБЛИОТЕКЕ](#). We look forward to further supporting libraries in Serbia in using the treaty to boost services and increase access to reading material for people who are blind and visually impaired.

2. Specific part of the Draft Law you are proposing, and your proposed amendment

Article 71 - Diligent Search Orphan Works

EIFL appreciates the need to harmonize domestic law with Directive 2012/28 on certain permitted uses of orphan works. At the same time, we note the Directive has largely failed in its objective to facilitate large-scale digitization of orphan works in Europe, due in large part to specific requirements for “diligent search”. We encourage Serbia to mitigate against these shortcomings in two ways:

1. Place the list of mandatory resources that are required for a diligent search (Article 71) in a by-law (such as a decree or regulation), rather than embedding the list in national legislation.
2. As a practical matter, make explicit that outdated sources can be omitted from the search.

Further, we strongly encourage implementation of Directive 2019/790 on copyright in the Digital Single Market (DSM). Articles 8 to 11 of the DSM Directive introduce new solutions for digitizing orphan works that are proving more successful than Orphan Works Directive.

3. Reasoning in support of the proposed amendment to the Draft Law

Article 71 - Diligent Search Orphan Works

A study by the European Commission (2021) on the application of the Orphan Works Directive found “the resource-intensive nature of the diligent search - which does not provide for risk-free use of the work - is the major barrier hindering use of the OWD”¹. It concluded that the Directive, and its national implementation, “do not facilitate the use of the orphan works system and in some cases create a considerable burden”.

To reduce the burden, the study recommends that the list of mandatory resources required for a diligent search should not be embedded within national legislation. In other words, resources in Article 71 would be better placed in a by-law (such as a decree or regulation), rather than enshrined in national law. This move would provide policy-makers with the necessary flexibility to amend the resources from time to time, as required. In addition, the list would ideally be non-mandatory, enabling library professionals to select the most appropriate resources for the works in hand.

As a practical matter, it should be made explicit that outdated sources can be omitted from the search. The list of sources in Article 71 is taken from Annex 1 of the OWD. In some cases, the resources are outdated or are subsumed into new services. For example, the Accessible Registries of Rights Information and Orphan Works (ARROW) was the output of a European-funded project that ended in 2011, and the project website (www.arrow-net.eu) is no longer operational. Yet as a condition for determining whether a work is orphaned or not, the Draft Law requires that ARROW is consulted.

In addition, we encourage Serbia to implement Directive 2019/790 on copyright in the Digital Single Market (DSM). Articles 8 to 11 of the DSM Directive introduced a mechanism to enable use of out-of-commerce works, a broader category that overlaps with orphan works (orphan works are often, if not always, also out-of-commerce). The mechanism is two-fold: it authorizes establishment of an extended collective licensing scheme for out-of-commerce works. In the absence of a CMO sufficiently representative in that Member State, it creates an exception for cultural heritage institutions to make OoC works in their permanent collections available.

Further, the DSM Directive applies to all categories of works, including photographs (stand-alone photographs are not included in the scope of the OWD). The problem of photographs was highlighted in the Explanatory Memorandum to the Draft Law.

The difference in approach between the two Directives is evident. While the EUIPO's Orphan Works Database records a mere 10,874 works (7,352 main works and 3,432 embedded or incorporated works)², the more recently established Out-of-Commerce Works portal contains over 2.7 million records³, providing public access to works of social and cultural importance that are no longer being exploited commercially.

¹ <https://op.europa.eu/en/publication-detail/-/publication/3c880c5c-7065-11ed-9887-01aa75ed71a1/language-en>

² www.euipo.europa.eu/en/observatory/awareness/ip-in-culture/orphan-works-db

³ www.euipo.europa.eu/en/observatory/awareness/ip-in-culture/out-of-commerce-works-portal

2. Specific part of the Draft Law you are proposing, and your proposed amendment

Article 49 - Right of the Author to Equitable Remuneration for Public Lending of the Work

Article 49 sets out the Public Lending Right in very broad and general terms. On the surface, it appears that PLR could apply to all types of libraries, all types of works, and to all types of authors. Article 6 of the EU Directive on Rental and Lending Right provides for an exemption for certain types of libraries (e.g. school, university, special libraries)⁴. Serbia should avail of this derogation.

Presumably, details on the design of the PLR system will be further set out in by-laws or implementing regulations.

⁴ Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property - Article 6 Derogation from the exclusive public lending right

1. Member States may derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain a remuneration for such lending. Member States shall be free to determine this remuneration taking account of their cultural promotion objectives.

2. Where Member States do not apply the exclusive lending right provided for in Article 1 as regards phonograms, films and computer programs, they shall introduce, at least for authors, a remuneration.

3. Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2.

3. Reasoning in support of the proposed amendment to the Draft Law

Article 49 - Right of the Author to Equitable Remuneration for Public Lending of the Work

Recognizing the practicalities of implementing a successful PLR system, and seeking to mitigate against the costs, the Directive on Rental and Lending Right allows for the exemption of certain types of libraries engaged in non-commercial lending (e.g. school, university, special libraries). Serbia should avail of this derogation. Other countries that have exempted certain categories of libraries are Croatia, Estonia, Greece, Ireland, Italy, Lithuania, Poland, Slovenia.

To support specific national cultural objectives, such as encouraging the Serbian language, literature and local publishing, and to ensure targeted use of public funds, we recommend focussing the scope of PLR on works in the Serbian language and/or to citizens or residents of Serbia. Other countries that have introduced such eligibility criteria are Croatia, Cyprus, Czech Republic, Denmark, Estonia, Poland, Slovenia, Spain.

Article 49 is silent on key issues such as who must pay the remuneration, the amount of remuneration, and whether remuneration is due to foreign as well as domestic authors. It is essential that libraries in Serbia are closely involved in the design of the PLR system (e.g. definition of publicly accessible libraries, method of loan calculations, loans data, government funding) to ensure that it is workable and a success.

We note that the exercise of PLR is mandated to a collective management organisation. We welcome implementation of EU Directive 2014/26 on collective management of copyright and related rights that will help to ensure good governance, efficiency and transparency in the collection and distribution of public funds.

2. Specific part of the Draft Law you are proposing, and your proposed amendment

New provision – Secondary Publication Right (SPR)

We encourage the introduction of a new provision on a Secondary Publication Right (SPR). SPR gives authors (or their institutions) the legal right to make a work openly available after or in parallel to publication of a formal version.

Example of a provision on SPR in copyright law that could be adapted for Serbian law⁵:

1. The author of a research work shall have the right to make that work, in any of its versions, freely available to the public in an online repository immediately after its acceptance for publication by a publisher.
2. A publisher that has accepted a research work for publication may not retract that acceptance on the ground that the author made the work freely available to the public in an online repository after acceptance of the article for publication.
3. The operator of an online repository in which a research work has been made available to the public may include:
 - A. an acknowledgement of the author, funder, and publisher of the work; and
 - B. an indication of which version of the research work is being made available.
4. Any contractual provision which prevents or restricts what is provided for in paragraphs 1 and 2 shall be null and void.
5. For the purpose of this Section, the following terms have the following meaning:
 - A. a “research work” means a work based on research directly or indirectly funded in whole or in part with public funding, including any third party content, such as images and tables, that are required for the specific purpose of understanding the research work;
 - B. a “version” of a research work means any iteration of the work, including: a preliminary draft; a draft submitted for publication but not yet peer-reviewed; a draft that has been peer reviewed and accepted for publication but not yet been edited or typeset; the final published form; and revisions to the final public form; and
 - C. “freely available” means immediate and permanent access, free of charge, for anyone to use, download, distribute, adapt, and build upon.

⁵ EIFL Draft Law on Copyright, 2025 At: eifl.net/resources/eifl-draft-law-copyright-including-model-exceptions-and-limitations-libraries-and-their

3. Reasoning in support of the proposed amendment to the Draft Law

A Secondary Publication Right (SPR) is a legislative measure to increase access to publicly funded research by enabling research outputs to be made available, by law, in open access under certain conditions. Specifically, it gives authors (or their institutions) the legal right to make a research work openly available after or in parallel to publication of a formal version - usually the peer-reviewed Author's Accepted Manuscript (AAM) or the final, typeset version, known as the Version of Record (VoR).

SPR can be found in a range of national laws, including copyright, science, technology & innovation in a growing number of countries in Europe (Austria, Germany, Netherlands, France, Spain, Belgium, Slovenia, Bulgaria). See [here for a blog on the introduction of SPR in Bulgarian copyright law](#) in 2023.

SPR is also on the agenda at European level. In 2023, the EU Council welcomed the introduction of SPR by Member States (Council conclusions on high-quality, open and equitable scholarly publishing⁶). In 2024, a European Commission study explored the introduction of an EU-wide Secondary Publication Right (it identified six policy options)⁷. In 2025, the Competitiveness Council endorsed better legal conditions for researchers to access and reuse publicly funded research results⁸.

Serbia should take inspiration from these developments by introducing its own provision on the right of secondary publication. Serbian researchers would benefit from guaranteed public dissemination of their research outputs, taxpayers would get better value for investment in research and development, and society would benefit from increased impact of published research in areas such as medicine, biotechnology, energy and transport. As a practical matter, SPR assists researchers in complying with funder open access policies, librarians managing complex workflows in Read & Publish agreements, and institutions in reducing the costs of OA publishing fees (known as Article Processing Charges). Additionally, SPR supports policy coherence at the national level by aligning the law on copyright with Serbia's law on Science and Research⁹, and at the European level by aligning with European Research Area priorities in making progress in open science, and increasing open access publications¹⁰.

⁶www.consilium.europa.eu/en/press/press-releases/2023/05/23/council-calls-for-transparent-equitable-and-open-access-to-scholarly-publications/#:~:text=The%20Council%20has%20adopted%20conclusions%20on%20high,in%20the%20European%20Research%20Area%20monitoring%20mechanism

⁷ Improving access to and reuse of research results, publications and data for scientific purposes. At: op.europa.eu/en/publication-detail/-/publication/77395a15-133b-11ef-a251-01aa75ed71a1/language-en

⁸www.consilium.europa.eu/en/press/press-releases/2025/05/23/council-endorses-the-european-research-area-policy-agenda-for-the-next-three-years/

⁹ Закон о науци и истраживањима: 49/2019-3, 108/2025-198 At: <https://pravno-informacioni-sistem.rs/eli/rep/sgrs/skupstina/zakon/2019/49/1/reg>

¹⁰westernbalkans-infohub.eu/wp-content/uploads/2025/08/ERA-Country-Report-2024-Serbia.pdf