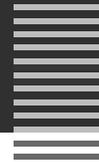


# The Importance of Establishing National Legislation on “Orphan Works”: Example of Old Doctoral Dissertations



***In the time of strengthening the idea of open access, when millions of works become available for free use, and sharing knowledge is new standard of international communication, the question of orphan works often becomes actual. Old doctoral dissertations make such material that frequently contains orphan works, and the interest for solution is great: this collection can hold the first scientific work of a future great scientist, not only at national levels. They are important and very significant testimonies of national education strategy at one historical moment. Making that material open could be better introduction to one part of national history, as well as it could improve knowledge about achievements of previous scientific generations. This important task should be entrusted to an authorized institution to conduct or to control the effects of “diligent search” that can enable “certain permitted use”, and variants of practice already exist.***

## Introduction

The Open Access movement is in the second decade of its existence, and the great international projects, such as Europeana, are trying to reveal the most valuable collections of museums, libraries and other cultural institutions in Europe. The number of items available in free access and use grows every day, and the other platforms, like Wikimedia Commons, encourages the tendency to deliberate the content under particular license. On the other side, many institutions, which would like to digitize and make available online parts of their collections, often face particular problem: they cannot fulfill that task because they cannot solve the problem of orphan works, which are still under the copyright, since it has not passed 70 years after the death of their authors, but the copyright holder is unknown. As one author indicated, cultural heritage (of the United States i. e.) are “rotting away” (Walker, 2014).

The project of digitalization of old doctoral dissertation, having been realized at the University library “Svetozar Marković” in Belgrade since 2014 (Project name: “Digitization of doctoral dissertations defended before 1941: dissertations of Serbian scientists defended on foreign universities and dissertations from Belgrade University (1905 – 1941)”) emphasizes not only the scope of the problem, but rather the absurdity of the situation. Newly defended theses in Serbia since 2014 have been under mandatory open access by the law legislations (Ministry of education, 2014). Some universities, like the biggest state university – University of Belgrade, have conducted such policy even earlier, since 2012. On the other side, significant number of theses defended at the end of 19<sup>th</sup> and at the beginning of 20<sup>th</sup> century cannot be in open access because of the possible copyright restrictions.

In this paper we intend to bring a short outline of possibilities that that could be the solution, considering the conditions and particularities of national infrastructure.

## Old doctoral dissertations

Old doctoral dissertations are very attractive material for research and presentation. They are illustrative testimonies not only of one part of development of national science, but of values and ideas in the society as a whole. The 19<sup>th</sup> century was for Serbia a period of hard process of getting independence after centuries long Turkish occupation. Thanks to skills and clever diplomacy of the prince Milos Obrenovic, who tried to gain the sovereignty not by insurrection, that already took many lives at the beginning of 19<sup>th</sup> century, but in slow yet irreversible process, Serbia managed to catch up European countries and enter the 20<sup>th</sup> century, in spite of all misfortunes, as independant and recovered kingdom.

One of the important factors of such process was education and it was systematically followed by the state. Although high education was established in 1838 by establishing the Lyceum, and fortified in 1863 by founding High School, the highest academic titles could not be gained in Serbia till the beginning of 20<sup>th</sup> century and establishing of Belgrade University. That is why many students, most of them thankfully to government support, went to study at European universities, mainly German or French, and among them there were those who defended their PhD theses. (Trgovčević, 2003) Some of the important and globally known scientist can be found between those students, like mathematician Mihailo Petrovic Alas (1868 – 1943), inventor

and professor at Columbia University Mihailo Pupin (1858 – 1935), or astronomer and climatologist Milutin Milankovic (1879 – 1958), etc.

Unfortunately, there is no complete list of PhD students that studied abroad, but some precise research were conducted for parts of that period, like 1885–1914 on the German universities (Trgovčević, 1994/1995). So far the University library "Svetozar Markovic" has digitized 58 dissertations from foreign universities, and 178 from the University of Belgrade since 1905 (date when previous High School overgrew into the University) till Second World War in 1941. For some number of these during 2015, the Library got digital copy from German libraries, which kindly provided this material.

This long term project has already shown its significance and social relevance, but the problem of availability remains. Only 17 % of them are in open access which is caused by the copyright restrictions, since they are mainly "orphan works". This percentage is slightly better if we take in consideration only theses defended on foreign universities (50 % theses defended abroad are in open access, only 6 % from Belgrade University). Among those which stayed unavailable are for example theses of university professors, physiologist Ivan Đaja (1884 – 1957), or pedagogue Vićentije Rakić (1881–1969).

## Possible solutions

In many countries the problem of treating the "orphan works" has been recognized and some steps towards finding adequate solution have been made. In 2012 the European Commission brought the Directive "on certain permitted use of orphan works" (Directive, 2012) but since it has not been implemented in national legislation yet, it stays, for now, out of reach (Popović, 2013).

In literature, possible options are already recognized and systemized: comprehensive study is conducted for seven jurisdictions, in particular for the United States, Hungary, Denmark, the European Union, Canada, India, Japan. One of the conclusions is that "three main regulatory approaches emerge therefore from the analysis: a) limited liability; b) extended collective licensing; c) central licensing authority" (Favale, 2015).

Following other analysis (Hansen, 2013), we can try to identify several main components that must be engaged even when concrete realizations could differ:

- 1) *Subjects* that could conduct the search, which can be individual but also collective
- 2) *System of control and approval* which must be regulated by some authorized institution, regardless of whether this institution has a task to conduct the search of just to approve or review the one conducted by an individual user
- 3) *Clear procedure* whose subject must follow to provide proof that his search was really "diligent"
- 4) *Adequate fund* that could be used in case that the right holder (inheritor) shows up. Considering conditions it is obvious that the institutional role is crucial in the process

These institutions can be established or the existing could broad their competencies in this area. In Serbia, an institution that could be authorized is Intellectual Property Office, which could engage significant human and information resources necessary for resolving that problem. From the librarian point of view, this institutional support is essential, since libraries rarely can provide their own resources only. On the other side, "diligent search" could involve libraries in formulating and identifying *relevant* resources.

## Conclusion

The open access for old doctoral dissertations, defended at the end of 19<sup>th</sup> and beginning of 20<sup>th</sup> century intend to bring light on particular scientific material so that it can be better valorized and understood. In the biographies of certain authors, future great scientists, these early works are often just mentioned, since the accent is put on their biggest achievements which usually came in their mature period. The theses are helpful to complete the picture and better evaluate someone's contribution to the world of science, better understand the formation of them and make biography fully comprehensive. For others, less known authors, it is a possibility to disclose them to the public so that their effort in one period of time could be recognized widely, since they all had kind of a mission to upraise the level of their education thus they could apply that knowledge and help the country development. That is why the regulations of "orphan works" issue demands the action and establishing proper legislations based on already existing experiences.

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