Bulletin of the *Transilvania* University of Braşov
Series VII: Social Sciences • Law • Vol. 18(67) Special Issue – 2025
https://doi.org/10.31926/but.ssl.2025.18.67.3.41

THE RIGHT OF PERSONS WITH DISABILITIES TO HAVE ACCESS TO SCIENTIFIC WORKS WITHOUT INFRINGING COPYRIGHT

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Abstract: *Copyright is an often ignored component within civil society, especially amid the use of social networks and the rapid transfer of data, information, images and music. However, society constantly benefits from scientific, literary and artistic works, experiencing a more harmonious development through them. Due to the importance and significant impact that such creations have on our lives, we must pay special attention to the protection of the copyright that accompanies them. Not infrequently, we have been confronted in our daily lives with the desire and the need to bring scientific, literary, artistic and even musical works closer to people with disabilities. Such an openness requires a certain form of manifestation of the work in order to be perceived by people with disabilities. We refer here, by way of example, to the written scientific work, inaccessible to blind people, and the need to transmit such a work to the blind by means of the Braille alphabet.*

Key words: *copyright, right of use, people with disabilities, social inclusion, non-discrimination.*

1. Introduction

The notion of copyright is enshrined in the doctrine (Macovei, 2010, p. 419) as having two meanings, on the one hand this notion can refer to the set of legal norms that refer to the relationships that arise from the creation and use of a work (Roș, 2016, p. 157), and, on the other hand, the same expression refers to the subjective right that belongs to the author, in the sense of patrimonial, civil law.

In the Romanian legal system, the main legal regulation regarding copyright can be found in Law no. 8/1996 which, in Article 1 paragraph 1, provides that the *object of legal protection is the work as an intellectual creation belonging to the literary, artistic or scientific field*; the phrase "work" is always assimilated in intellectual property law with the concept of originality (Coteanu et al., 1998, p. 722), creativity, and necessarily with the involvement of a human factor.

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In other words, no matter how often used are artificial intelligence systems in various fields but also in the literary field, the phrase literary, scientific or artistic work is incompatible with the idea of creating such a work by a computer program or by any other factor that does not involve human originality and creativity.

Starting from these notions, as well as from the initial regulation of the work in relation to copyright, as they were regulated by the Berne Convention (Dominte, 2024, p.10), we consider it important to define the notion of work not only in terms of national legislation but also in terms of European Union jurisprudence. In essence, the Romanian case-law refers to this case-law of the European Union, which, by the solutions rendered in cases *C-683/2017, Cofemel – Sociedade de Vestuario SA v G Star Raw CV and C-310/2017 Levola Hengelo BV vs. Smilde Foods BV* held that the following are defining elements of the concept of work:

- the existence of an original object in the sense that it represents an *intellectual creation proper to its author,*
- the qualification as a work is limited to the elements that are *the expression of such a creation* (Dominte, 2024, p. 316).

From the definition resulting from the motivation and argumentation of European jurisprudence, it follows that the notion of work is linked to 2 key words: **original and expression**, so that the creator of a work can be assimilated to a creator of expression (Murakami, 2016, taken from Dominte, 2024, p. 316).

2. Copyright. Object

2.1. Categories of works protected by copyright

We can say that the object of copyright is those original works of intellectual creation in the literary, artistic or scientific field, regardless of the form and manner of creation, mode or form of expression, regardless of their artistic value and destination (art. 7 of Law no. 8/1996) (Dinu, 2024, p. 343-348). This category of works includes literary and publishing writings, conferences, sermons, pleadings, lectures or any other written or oral works, as well as computer programs; scientific works, communications, studies and university courses, scientific projects and documentation, musical compositions with or without text, dramatic, choreographic, musical, cinematographic works, photographic works or graphic or plastic art, architectural works.

Although the above list is made by way of example, we mention the fact that in European jurisprudence, especially in a decision issued by the French courts in 1999, **the scent of a perfume was considered a creation,** French jurisprudence stating that it can benefit from copyright protection (Derclaye, 2006, p. 378).

In order to support the theme of this Conference, we propose to analyze in this article the situation in which certain works protected by copyright can be made accessible to certain categories of persons with disabilities who do not have the possibility to perceive the beauty of the work, to know the original and creative character of the work, except by transposing it into another format, accessible to some senses that the person may have.

In close connection with the topic researched in this article but also with the object of copyright, we consider it necessary to mention the fact that copyright protects not only original works but also derivative works, as they are regulated by Article 8 of Law no. 8/1996. Starting from the definition of the word **derivative**, we can reach a simple conclusion that such works are based on pre-existing original works. By way of example, we list from the category of derivative works translations, annotations, adaptations but also collections of literary, artistic or scientific works.

It is essential to note that a translation of a literary work into another language constitutes a derivative work, being also protected by copyright in the same way as the original work. Each translation is different simply because the translator gives a personal note on the translation made. *The perfect translator must be a writer capable of subsuming himself to the text and the identity of the greater writer,* argued J, Barnes in his book Through the Window (translated by Paraschivescu, 2014, p. 198).

2.2. Categories of Rights that arise from the mere realization of the work

I consider it essential to mention that, according to national law, from the moment of the creation of an original work, the law recognises the legal protection governed by copyright, without the need to fulfil any prior formality.

We make this clarification in order to compare the Romanian legal system, similar to the European one, with the American legal system in which, according to the Copyright Law, in order to benefit from the legal protection of the state regarding the work created by a certain person, the author of the work must perform certain prior formalities and register his creation. In the absence of such formalities, the American state does not grant the legal protection offered in the Romanian legal system (Bodoaşcă, 2024, p.32).

The provisions of Law no. 8/1996 refer to the fact that 2 categories of copyright are recognized in the patrimony of the author of a work or a literary, scientific or artistic creation: **patrimonial rights** (which refer to the right to use the work and the right of resale) and **non-patrimonial rights** (the right to disclose the work, the right of authorship over the work, the right to establish the name under which the work will become known, the right to the entirety of the work and the right to retract the work).

Moral copyright are absolute rights, inextricably linked to the person of the author, non-transferable and imprescriptible, not capable of being exercised by way of general representation (Roş, 2016, p. 284).

Essential within these moral rights is the fact that they cannot be transmitted through inter *vivos acts*, and the opinion of the doctrinaires is that they cannot even be transmitted through acts *mortis causa* (Bodoaşcă, 2024 p 55). The same doctrinaire considers that in the case of 3 of the 5 moral rights mentioned above, what can be transmitted is the exercise of these moral rights and not the right itself. It is about the right to authorship, the right to the entirety of the work and the right to publish the work (Bodoaşcă, 2024, p. 128).

Of particular relevance in the exercise of copyright, are the economic rights regarding the right to use the work and the resale right. The right to use the work is regulated by

art. 12 of Law no. 8/ 1996 and refers to the fact that the author of a work has the exclusive economic right to decide whether, in what way and when his work will be used, including to consent to the use of the work by others.

This right has a complex content given that the author of a work has at his disposal multiple prerogatives such as the use or non-use of his work, the establishment of the time at which it will be used but also of the modalities, the possibility of using his work by other persons, but also to benefit from the material and moral advantages deriving from this use, and last but not least, to oppose any misuse of the work by third parties and to resort to the coercive force of the state to respect these prerogatives.

The essence of the exercise of the right of use in relation to a work protected by copyright, mainly concerns the possibility of obtaining material advantages as a result of the use of that work both by the author and by third parties, so that when third parties wish to use the work of an author for the purpose of obtaining material advantages, they are obliged to obtain the prior consent of the author, and we also believe, must materialize the agreement in written form in the form of an assignment contract, which includes, in addition to the essential clauses (such as the exclusive or non-exclusive nature of the assignment, the duration of time and the territorial area in which the use by the assignee will be made) the remuneration due to the author of the work - assignor within the assignment contract, and its agreement in favour of the third party assignee to use the work under the conditions set out in the contract.

3. Cases of Restriction of Copyright Use

In Articles 35-39 of Law no. 8/1996, the legislator provides **for the limits of the exercise of copyright,** referring to those situations and conditions that third parties must meet in order to use or transform a work without payment of remuneration and without obtaining the author's prior consent.

Starting from the phrase used by the legislator, **the limits of the exercise of copyright,** we observe and opine that the term limitation is not an appropriate form used by the law given that this term is used mainly when the doctrine discusses the general limits within which a right can be exercised, expressly referring to public order and good morals (Gh. Beleiu, 2001, p. 85).

By the regulation of Articles 35 to 39 of the Aegean Law no. 8/1996, we consider that the legislator envisaged rather a restriction of the use of these copyrights, given that in this situation it is not a question of express observance of public order and good morals, but of certain situations expressly provided by the legislator in which, third parties may use or even transform a work, without the prior consent of its author, and without being obtained by the payment of any remuneration.

3.1. General conditions for the restriction of copyright

If we discuss the general conditions in which third parties can use the work without the consent of the author(s), they must refer, cumulatively, to the following:

- The work has previously been brought to the public's attention,

- the use is in accordance with good practice,
- the use does not contravene the normal exploitation of the work,
- the use does not prejudice the author or the holder of the right of use,
- third parties indicate the source and the name of the author.

Of all the situations expressly provided for by law in which third parties may use a work without the author's consent and without payment of remuneration, in compliance with the conditions set out above, we will stop to investigate in this article **the reproduction, distribution, broadcasting or communication to the public, without a direct or indirect commercial advantage or financial gain, in cases of use for the benefit of persons with disabilities, where such use is directly related to that disability and limited to the extent required by that disability.**

In this situation, the reproduction of a work is determined by its use for the benefit of people with disabilities, hence this text mainly covers scientific works such as studies, projects or scientific documentation.

Therefore, not every artistic, scientific or literary work can fall within this category, which is regarded by both the legislator and legal doctrine as an exceptional situation aimed at restricting the exercise of a civil right – namely, the right to use a work. Being an exceptional situation, expressly regulated by law, we consider that this is a situation of strict application and interpretation, and cannot be extended to other situations not provided for by the legal text.

If we talk about the category of persons and their situation who can benefit from the above-mentioned exception, it should be noted that the disability consists of a sensory, motor or mental deficiency, and that given that the legislator does not expressly provide for the nature of the disability affecting the beneficiary of the exceptional rule, the interpreter will not do so either. I consider that the essence of the application of this exceptional situation lies in *the direct link that exists between the specificity of the work and the nature of the disability of the beneficiary of that rule.*

If we discuss, as an exception, the situation **of the blind**, we find various online associations that advocate for the respect of the rights and social inclusion of people suffering from such a disability. According to some websites (https://www.orcam.com/ro-ro/blog/asociatii-si-organizatii-care-ajuta-persoanele-nevazatoare-sau-cu-deficiente-de-vedere?srsltid=AfmBOopZFwNHU9JNhAfuWoXAoktUx13yrrWyC_4Y9U2ZbZ425xwpbNs), such associations are concerned with providing braille textbooks, audio recording of materials from school bibliography, providing specific equipment and devices, promoting and involving visually impaired students in national cultural activities (music, literature, translations, etc.).

Thus, we find this exception from the use of copyright necessary, welcome and in accordance with all the European principles that Romania has undertaken to guarantee to its own citizens, in order to ensure good social inclusion, in order to ensure equal opportunities for all people, and in order to ensure respect for human dignity.

The jurisprudence of the European Court of Human Rights has always been in agreement with the inclusion of persons with disabilities and the openness of

institutions to the particular needs of individuals, in the sense of non-discriminating against them. By way of example, I note that in the ECHR case, *Çam v. Turkey, (no. 51500/08, 23 February 2016, discussed in section 4.4.3, paragraph 67),* with regard to the refusal of a music academy to enroll a student on the grounds of his or her visual impairment, the ECHR established that the State had not taken positive measures to ensure that students with disabilities could benefit from education in a non-discriminatory manner.

The ECHR noted that discrimination on the basis of disability also encompasses the refusal to provide appropriate accommodation (e.g. adapting teaching methods to make them accessible to blind students) (text taken from the Handbook on European Law on Non-Discrimination, 2018, p. 85 and p. 145)

In the case of Çam v. Turkey, the ECtHR found that the refusal of a music academy to approve the enrolment of a student on account of her visual impairment, despite the fact that she had passed the entrance examination, violated Article 14 of the Convention in conjunction with Article 2 of Protocol No. 1. The ECtHR emphasised that Article 14 must be interpreted in the light of the European Social Charter and the UN Convention on the Rights of Persons with Disabilities as regards the appropriate accommodation to which persons with disabilities were entitled to expect.

The ECtHR pointed out that the competent national authorities had made no effort to identify the applicant's needs and had failed to explain how or why her blindness might hinder her access to music education. The music academy also did not try to adapt its educational approach to make it accessible to blind students (chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-handbook-non-discrimination-law-2018_ro.pdf).

The need for the above-mentioned legal provision, which has the sole purpose of protecting the interests of people suffering from a disability, is all the more necessary in Romania, given that, according to the latest reports, banks sometimes refuse to open bank accounts for blind people on the grounds that they cannot read the contract.

Even if they are not deprived *de jure* of legal capacity by interdiction, there are persons who are de facto deprived of the possibility of concluding civil acts due to other legal, administrative or attitudinal barriers. Decisions in everyday life often also require the conclusion of civil acts. People with disabilities frequently face various types of barriers in trying to reach legal agreements. People with disabilities have the right to manage their financial resources, but this is not always respected.

For example, banks sometimes refuse to open bank accounts for blind people on the grounds that they cannot read the contract, refuse to issue bank cards to people with disabilities or conclude credit contracts when they consider that the person is not able to make decisions (Diagnosis of the situation of people with disabilities in Romania, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://anpd.gov. ro/web/wp-content/uploads/2023/01/Diagnoza-situatiei-persoanelor-cu-dizabilitati-in-Romania.pdf).

The CNCD decided that such a situation violates the right of the person concerned to have equal access to banking services, on the basis of disability (CNCD Decision no. 97/07.03.2018). The curator of the person with disabilities had to go to the bank in

person to make withdrawals and operations from the account. Through the treatment in question, the banking unit created a hostile, degrading environment, and the act represents harassment against the person with disabilities, the account holder, but also its curator (https://www.cncd.ro/wp-content/uploads/2020/12/hotarare-97-18_dosar-598-17_h_II_Constatareamenda-5000-lei-recomandare.pdf).

In order to remedy these forms of discrimination, art. 12 para. (5) of the CRPD calls on States Parties to take appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to manage their own income and to have equal access to bank loans, mortgages and other forms of financial credit, and to ensure that persons with disabilities are not arbitrarily dispossessed of their property.

4. Conclusions

In the light of the above, we consider that the legal provision of art. 35 para. 2 letter e) of Law no. 8/1996, comes to ensure in a legal, unitary and fair manner, the possibility of access for blind people, or for people suffering from another disability, to education and information.

As mentioned above, that exception concerns the fact that, insofar as the conditions set out above are complied with, third parties have the possibility of using scientific works, transforming them, transcribing them into Braille and thus making them available to blind persons in order to ensure that persons have access to scientific information, education, with full respect for their right to non-discrimination and social inclusion.

We consider that, in such situations, even the notion of restricting the exercise of the right to use a work appears to be excessive, given that these scientific works, studies, projects and documentation, should be accessible to all citizens, regardless of whether one or more of their senses are affected by certain deficiencies.

Therefore, we consider that the interference with the author's right of use of the scientific work or with the copyright holder's rights regarding the scientific work, is in this context not only necessary but also moral, in order to guarantee and respect all individual rights and freedoms of all citizens of the Romanian state.

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