

# THE EDITING AGREEMENT

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**Abstract:** *The Editing Agreement is one of the main types of patrimonial copyrights agreements. This is defined by the law as the convention by which the copyright holder transfers to the editor, the right to reproduce and distribute its work, in exchange of a wage (art. 48). This article discloses the claims of the Editing Agreement, the pattern and also other specific rules for this type of agreement.*

**Key words:** *editing, agreement, copyright.*

## 1. Introduction

Law 8/1996 on copyright and the corresponding rights is the legislative act dealing with the protection of literary, artistic and scientific work, as well as the protection of those creating the works.

Pursuant to provisions of art. 27 from the Universal declaration of human rights:

*“(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.*

*(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.”*

The literature [1] has proven that the assumptions established from art. 27 of the universal declaration of human rights give rise to the two significant reasons leading to the establishment of copyright.

First of all, this enables the author to maintain ownership of the use of his production and, therefore, to claim payment.

Secondly, it ensures access to its production for society.

The same authors show that the two principles are closely related, whereas copyright aims at establishing a fair balance between them, as much as possible.

The author is encouraged to create and publish his works, in order for them to be available to the public.

Consequently, the author is granted sufficient exclusivity, by law, a limited operation monopoly providing an income, but, since society is the one offering work conditions for the author, it is only fair that it shall benefit within certain limits from published works.

This is the reason why exclusivity is limited in time and, upon its expiry, the work becomes public domain.

Law no. 8/1996 regarding copyright and the connected rights regulate the main types of patrimonial copyrights of capitalization agreements.

We mention: The Editing agreement (2<sup>nd</sup> section), representation agreement or

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music performance agreement (3<sup>rd</sup> section), lease agreement (4<sup>th</sup> section), order agreement (art. 46) and the agreement for audio-visual adaptation (2<sup>nd</sup> part, chapter VIII, art. 68).

The Editing Agreement is defined by the Law as the convention by which the copyright holder transfers to the editor the right to reproduce and to distribute its work, in exchange of a wage (art. 48).

Although, in common language the *editing* term points us immediately towards the book, the application field for the Editing Agreement is not limited to the written works and their reproduction, but takes into account any type of intellectual creation work for reproduction: literary works, graphics, musicals, multimedia etc. [2].

A work can be edited in several ways, according to the type of material used: paper, electronic format etc.

Also, we have to mention that the editing regards only the work reproduction, not its adaptation.

## 2. The Editing Agreement

The legislator provisions in article 49 that: “the copyright holder *can transfer to the editor, the right to authorize the work translation and adaptation*”, and art. 50 provisions that: “*the transfer towards the editor of the right to authorize other persons in order to adapt the work or to use it in any other manner has to be subject of an express contractual provision*”.

The Editing Agreement is a reciprocal, consensual, for good and valuable consideration and commutative agreement, and if it represents an exclusive transfer, it is a rights translatative agreement, because the author gives the editor the real right for reproduction and distribution of the work,

under the conditions stated within the agreement.

The Editing Agreement is a reciprocal one because it imposes rights and obligations for both parties.

The editor undertakes the obligation to reproduce and distribute the work, and the author to set the work at the editor’s disposal.

Also, this is a consensual agreement because it can be concluded by a simple will agreement, the written form being necessary *ad probationem*.

In short, the editing agreement is for good and valuable consideration and commutative agreement because both parties wish to obtain a patrimonial advantage, and the extension of the parties’ rights and obligations is known from the agreement conclusion.

Also, the editing agreement is an *intuitu personae one*, art. 54 from the Law states by virtues of the character that: *the editor will not be able to transfer the editing agreement without the author’s consent*.

The Editing Agreement parties are: the author or his successor in rights and the editor.

Basically, the editor is an intermediary between the author and the public, by its activity the intellectual creation work being set in printing number is available for the public, by means of publicity, with the help of the printing factory and the bookstore.

According to the provisions as per art. 51 from the Law: “The Editing Agreement has to include the claims regarding:

- a) transfer duration;
- b) exclusive or non-exclusive nature and the territorial extension of the transfer ;
- c) maximum or minimum number of copies;

- d) author's remuneration, settled under the present Law conditions;
- e) number of copies reserved to the author on a free basis;
- f) the term for the issue of copies and release for each edition or, if the case, of each printing number;
- g) the delivery term of the original work by the author;
- h) the control procedure of the number of copies produced by the editor.

The absence of any of the claims provisioned at letters a), b) and d) prevents the right of the interested party to require the agreement cancellation.”

In the doctrine [3] it was shown that by corroboration with art. 41 paragraph 1 from the Law, which refers to the transfer agreements for patrimonial copyrights, generally, the Editing Agreement has to include also claims regarding the mention of the transferred rights and the used methods under the same sanction of relative nullity.

We have to mention that the editor is forced to allow the author to bring improvements or other alterations of his work in the case of a new edition, under the condition that these improvements or alterations do not increase essentially the costs of the editor and does not change the work character, if it is not provisioned differently within the agreement.

Also, the editor will be able to transfer the editing agreement only with the author's consent.

The editor is compelled to return the original work to the author, the originals of the art works, illustrations and any other documents received for publishing if it was not settled differently.

Despite a contrary convention, the editing agreement will stop after the expiration of the settled duration or after the finish of the last edition.

The edition or the printing number is consider out of print when the number of unsold copies is smaller than 5% from the total number of copies and, in any case, if it is below 100 copies.

If the editor does not publish the work within the settled terms the author may require according to the common right, the cancellation of agreement and payment of damages for non-execution. In this case, the author keeps the received payment or, can require the payment of the entire amount provisioned within the agreement.

If the term for the publishing of work is not provisioned within the agreement, the editor is coerced to publish it one year from the acceptance date at the latest.

In the case in which the editor intends to destroy the work copies, which remain in stock two years from the publishing date, and another period is not provisioned, he is coerced to offer them to the author at the price he would have obtained by means of selling for destruction.

In the case of work destruction due to force majeure, the author has the right to a remuneration paid only if the work was published.

In the case in which a prepared edition is totally destroyed due to force majeure before being issued, the editor is coerced to prepare a new edition, and the author will have a right of payment only for one of these editions.

If a prepared edition is partially destroyed due to force majeure before being issued, the editor has the right to reproduce, without payment to the author only the number of copies which were destroyed.

**References**

1. Roş, V., Bogdan, D., Spineanu Matei, O.: *The copyright and additional rights. Treaty*. Bucharest. All Beck Publishing House, 2005, p. 33-34.
2. Roş, V., Bogdan, D., Spineanu Matei, O.: *The copyright and additional rights. Treaty*. Bucharest. All Beck Publishing House, 2005.
3. Eminescu, Y.: *The copyright*. Bucharest. Lumina Lex Publishing House, 1994.
4. Eminescu, Y.: *Legal Status of intellectual creation*, 2<sup>nd</sup> edition. Bucharest. Lumina Lex Publishing House, 1996.
5. Danila, L.: *The copyright*. Bucharest. C.H. Beck Publishing Houses, 2005.