

COPYRIGHT PROTECTION IN NATIONAL LEGISLATION

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Abstract: *Copyright, as an independent branch of intellectual property law, is of particular importance in today's society that relies more and more on content, especially on social media networks (pictures, images, songs, videos). Copying them, using them requires a good knowledge of the notion of copyright, of the regulation at the European Union level but also at the national level, it also requires a good knowledge of the mechanisms that can be used to protect these copyrights.*

Key words: *intellectual property, copyright national legislation, European Union legislation, copyright protection.*

1. Introduction

Intellectual creations and their creators enjoy exclusive rights when it comes to their protection and exploitation, and these rights are capitalized under the general notion of intellectual property law. It is divided into two categories, the first being the industrial property, which includes inventions (patents), trademarks, designs and industrial models. The second category regards copyright, namely literary and artistic works. Since the adoption of the Treaty regarding the Functioning of the European Union (TFEU) in 2009, the European Union has an explicit competence in the field of intellectual property rights according to Article 118 of the Treaty. (<https://www.europarl.europa.eu/factsheets/ro/sheet/36/propietatea-intelectuala-industrialala-si-comerciala>)

In this article we will focus on the treatment of copyright and how it is protected by national legislation and jurisprudence. We consider it important to promote the existence of these copyrights in today's society which relies more and more on copying such creations without giving the creator the recognition conferred by law.

Thus, copyrights are intellectual property rights conferred by the legislator to authors over their creations. When we use the term creations, we mean songs, books, music, photos, etc. Ownership of copyright gives the holder the right to use and exploit the work, but this right is not exclusive and/or discretionary, it has some exceptions.

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When a person creates a musical work on a tangible medium, that person automatically becomes the owner of the copyright in that work. Thus he becomes the owner of the copyrights that accompany the work (we can state that copyright protects each work from illegal use, from illegal exploitation by third parties) and protects the patrimonial property of the author of the creation that represents the object of the copyright.

2. National legislation

Copyright is a set of legal rights that the author/creator automatically acquires when creating an original work or one derived from a pre-existing work. These rights provide exclusive control over how the work is used and distributed. Basically, copyright gives the power to decide who can use that creation and under what conditions. (<https://jurjut-mart.ro/ce-sunt-drepturile-de-autor-si-cum-ti-le-protejezi/>)

This is what art. 1 of Law no. 8/1996 (Law no. 8/1996) regarding copyright: ^{^(1)} *Copyright over a literary, artistic or scientific, as well as on other works of intellectual creation is recognized and guaranteed under the conditions of this law. This right is linked to the person of the author and includes moral and patrimonial attributes. (2) The work of intellectual creation is recognized and protected, independently of bringing it to public knowledge, by the simple fact of its realization, even in an unfinished form.*^{^^}

Copyright is regulated and designed to ensure that authors, composers, artists, filmmakers, etc. are remunerated and that their works are protected from illegal use, from their illegal exploitation.

Digital technologies have profoundly changed the way creative content is produced, distributed and accessed often the changes made on social networks are so frequent and varied that legislation and jurisprudence have to make great efforts to keep up with them.

The European Union has regulated copyright and intellectual property through no less than 13 directives and two regulations that harmonize the essential rights of authors, performers, producers and broadcasters. The aim is to create a unified standard at the level of the European Union in order to reduce national discrepancies, especially under the conditions in which the works and creations that form the object of copyright circulate extremely quickly on the markets and to the societies of the entire Union. This ensures a level of protection necessary to stimulate creativity and investment in creativity, promote cultural diversity and facilitate access for consumers and businesses to digital content and services within the single market.

According to art. 7 of Law no. 8/1996, original works of intellectual creation in the literary, artistic or scientific field, regardless of the method of creation, mode or form of expression and independent of their value and destination, are subject to copyright, such as:

- literary and journalistic writings, conferences, sermons, pleas, lectures and any other written or oral works, as well as computer programs;
- scientific works, written or oral, such as: communications, studies, university courses, school manuals, scientific projects and documentation;

- musical compositions with or without text;
- dramatic, dramatic-musical works, choreographic works and pantomimes;
- cinematographic works, as well as any other audiovisual works;
- photographic works, as well as any other works expressed through a process analogous to photography;
- works of graphic or plastic art, such as: works of sculpture, painting, engraving, lithography, monumental art, scenography, tapestry, ceramics, plastic glass and metal, drawings, design, as well as other works of art applied to products intended a practical use;
- architectural works, including plans, models and graphic works that form architectural projects;
- plastic works, maps and drawings in the field of topography, geography and science in general.

The Romanian legislator also regulates the notion of derivative works as an object of copyright, those works created from one or more pre-existing works. According to art. 8 of the law, constitute derivative works,

a) translations, adaptations, annotations, documentary works, musical arrangements and any other transformations of a literary, artistic or scientific work that represents an intellectual work of creation;

b) collections of literary, artistic or scientific works, such as: encyclopedias and anthologies, collections or compilations of materials or data, protected or not, including databases, which, through the choice or arrangement of the material, constitute intellectual creations.

3. The duration of the copyright and of the related rights protection

Copyrights are protected for **the entire lifetime of the author and for 70 years after the death of the author/creator**. According to Directive 2011/77/EU amending Directive 2006/116/EC on the duration of copyright protection and of certain related rights extended the term of copyright protection for sound recording artists from 50 to 70 years after recording and for musical authors, such as composers and lyricists, to 70 years after the author's death.

The 70-year term has become an international standard for the protection of sound recordings. Currently, 64 countries around the world protect sound recordings for a period of at least 70 years.

According to art. 28 of Law no. 8/1996, the Romanian State protects the author's rights for the same period of 70 years after the author's death, making a clear distinction between patrimonial and moral rights (the latter being those related to the author's person, and which exist indefinitely)

The patrimonial rights provided for in art. 13 and 24 last for the lifetime of the author, and after his death they are transmitted by inheritance, according to civil legislation, for a period of 70 years, whatever the date on which the work was legally brought to public knowledge. If there are no heirs, the exercise of these rights falls to the collective management body mandated during the author's lifetime or, in the absence of a

mandate, to the collective management body with the largest number of members, in the respective field of creation.

Moral rights, being linked to the person of the author, last indefinitely, even after the patrimonial rights have expired.

4. Protecting copyrights under the present legislation

Article 1 of law no. 8/1996 provides that the copyright on a literary, artistic or scientific work, as well as on other works of intellectual creation, is recognized and guaranteed under the conditions of this law. This right is linked to the person of the author and includes moral and patrimonial attributes.

There are also situations where it is allowed to use the work without the author's consent. Such cases are those mentioned by art. 35 (1) of Law 8/1996 republished, regarding copyright: *(1) The following uses of a work previously brought to public knowledge are permitted, without the consent of the author and without payment of any remuneration, provided that they are in accordance with good customs, not to contravene the normal exploitation of the work and not to prejudice the author or the holders of the rights of use:*

- a) reproduction of a work within judicial, parliamentary or administrative procedures or for public safety purposes;*
- b) the use of short quotations from a work, for the purpose of analysis, commentary or criticism or as an example, to the extent that their use justifies the length of the quotation;*
- c) the use of isolated articles or short excerpts from works in publications, in radio or television broadcasts or in audio or audiovisual recordings, intended exclusively for education, as well as reproduction for education, within educational or social protection institutions, of isolated articles or short extracts from works, to the extent justified by the purpose pursued;*
- d) reproduction for information and research of short extracts from works, within libraries, museums, film libraries, sound libraries, archives of public cultural or scientific institutions, which operate without profit; the complete reproduction of the copy of a work is allowed, for its replacement, in case of destruction, serious damage or loss of the unique copy from the permanent collection of the respective library or archive;*
- e) specific reproductions made by libraries accessible to the public, by educational institutions or museums or by archives, which are not made for the purpose of obtaining a commercial or economic advantage, directly or indirectly;*
- f) reproduction, excluding any means that come into direct contact with the work, distribution or communication to the public of the image of a work of architecture, plastic art, photography or applied art, permanently placed in public places, except in cases where the image of the work is the primary subject of such reproduction, distribution or communication and whether it is used for commercial purposes;*

- g) the representation and performance of a work within the activities of educational institutions, exclusively for specific purposes and on the condition that both the representation or performance and public access are free of charge;*
- h) the use of works during religious celebrations or official ceremonies organized by a public authority;*
- i) the use, for advertising purposes, of the images of works presented in exhibitions with public access or for sale, fairs, public auctions of works of art, as a means of promoting the event, excluding any commercial use.*

The most frequent situations encountered by judicial practice at the moment are those aimed at economic traders (either hotels and accommodation units but also manicure salons, hairdressers, bars and restaurants) who are obliged to pay authors and copyright holders a remuneration standard for broadcasting via radio, television or online streaming channels of copyrighted works.

On the territory of Romania, copyright holders can form organizations that ensure the respect of the copyrights of its members, one such body being the Romanian Phonogram Producers Union (UPFR) - Related Rights Association. Union of Producers of Phonograms from Romania (UPFR) – Association for Related Rights operates on the basis of Law No. 8/1996 with subsequent amendments and additions, as a body for collective management of the related rights of producers of phonograms in Romania.

UPFR is a collective management body designated by ORDA decisions to collect the remuneration due to music producers from the use of phonograms in public communication, in the phonogram radio broadcasting activity. (<https://upfr.ro/legislatia-in-vigoare/>)

The Union concludes contracts with merchants on behalf of its members, distributing to them monthly from the amounts collected based on the concluded contracts. According to art. 112 of Law no. 8/1996, for the public communication of phonograms, users owe the producers a fair remuneration, which is established under the terms of art. 162-164 of the same law.

The same body advocates and supervises the public communication of audiovisual works, the payment of sums being required pursuant to art. 146 lit. b) of the law that regulates that the right of public communication of works, except for musical works, and artistic performances in the audiovisual field can be managed collectively.

Broadcasting of cinematographic and/or audiovisual works through music/film channels, etc. from hotel rooms, bars, restaurants, waiting rooms of hospitals, salons, etc. is subject to these regulations, the payment of the above-mentioned remuneration being necessary.

Although the Romanian legislator protects copyrights and also regulates the methods of operation and collection of these amounts due for the exploitation of copyrights, it did not consider it necessary to constitute for the benefit of the creators, the owners of the copyrights an enforceable title by the effect of the law, leaving at the discretion of the copyright holders if they wish to obtain an enforceable title for the exploitation of their copyrights by starting individual or collective actions before the courts.

5. Conclusions

Works, literary and artistic creations, works but also any creation in the audio-visual field represent the object of copyright, as a component of the intellectual property right. The purpose of protecting these rights is a patrimonial one, protecting the patrimony of the creator who can thus exploit, without competition, his own creation, at its full value.

Over time, organizations and unions have been established to ensure the respect of these rights considering their importance but also the existence of these creations and works in everyday life.

European legislation, harmonized with national legislation, recognizes, protects and confers all the levers and mechanisms for the protection of genuine and derivative works for the benefit of their creators. On a national level, jurisprudence supports this approach of the legislator, often giving a win to unions and organizations that aim to protect the copyrights of their members.

The value of these works is recognized as a patrimonial component in the patrimony of its creator even after his death, these rights being able to benefit the heirs of the creator for a period of 70 years after his death, thus proving the importance of these rights in the opinion of the legislator.

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Law no. 8/1996 published in the Official Monitor of Romania no. 489 from 14th June 2018