

INSTRUMENTAL TRANSCRIPTION FOR GUITAR AND ITS FRAMING IN THE COPYRIGHT LAW

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Abstract: *Publication framing in the articles corresponding to the aforementioned law pre-eminently represents a legal approach that may be made under the law, by authorized persons. The existence of a general score entails, as agreed upon by experts, the mandatory editing of the parts afferent to the overall score. The observance of the legal text outlined above must be an ongoing preoccupation for all composers and likewise for all adequately skilled and professionally trained persons to discharge these specific activities.*

Key words: *transcription, law, author, scores, standardisation*

1. Introduction

The preoccupation with instrumental transcription represents the professional interest for the augmentation, diversification and enhancement of the instrumental repertoire, as one's main source of inspiration is the musical composition proceeding from other instruments than the one(s) intended for the achievement of the transcription operations.

It should be specified from the outset that instrumental transcription does not mean an author's alleged editorial "caprice".

Editing, as scientific approach, requires thorough training of the one who performs the transcription, and his/her resorting to related fields such as, instrumental performance, musical composition and, not least, computer-assisted editing. Therefore, from the outside of the editorial approach,

things seem easier, but from within, the responsibility for instrumental (and vocal) transcriptions, which deals with all aspects in technical terms, the very action of transcription is undoubtedly a challenge both on the coordinates of the initial knowledge and subsequently, after the publication, as regards the restitution to the beneficiaries – performers, of the sonorous material encoded in the scores achievable through cutting-edge software-s: Sibelius, Finale, Mozart, Cubase.

2. Preliminary juridical framing of the instrumental transcriptions

Even if there is about the preliminary framing, the final product of the transcription approach does not mean at all copies of already published works, as a first glance at the transcription phenomenon might show.

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Conceptually, it is worth understanding that republishing musical works, deteriorated over time, (for instance, some scores in manuscript date more than 200 years back) is a conversion of a composer's musical work, which falls under the *Copyright Law, 1996* [1]. Publication framing in the articles afferent to the aforementioned law pre-eminently represents a juridical approach achievable under the law by authorized persons. The reader's simple opinion, more or less *au fait*, is a matter of aesthetic taste and of analytical, critical approach; nevertheless the persons' right to freely express themselves is allowed in the frame stipulated by the Constitution and must not be curtailed.

2.1. Benchmarks of instrumental transcription

In order to understand the transcription phenomenon and its framing in the Copyright Law, a few clear-cut benchmarks must be established from the outset:

- a) Not all musical instruments need instrumental transcriptions [2];
- b) Not anyone, even if (s)he wants, can make these transcriptions;
- c) Music instruments with vast and complex specialized musical literature need instrumental transcriptions to minimal extent;
- d) The editorial approach embodied by transcription is a pressing need, a diversification and augmentation of the repertoire afferent to the instruments that did not enjoy, over music history, a significant number of compositions, along with an adequate quality, in line with the standards for the development of instrument manufacturing and for the evolution of instrumental techniques;

3. Musical arrangement

Musical arrangement is a more or less complex modification of the original text [3]. The complexity level of the modifications varies according to several determinatives, as follows:

- Arranger's training level;
- Number of instruments for whom the musical arrangement is made;
- Musical instrument(s) for whom the arrangement is destined;
- Tonality in which the musical work is transposed and arranged;
- Particular and general degree of technical and expressive complexity of the musical work under arrangement;

MORGENGEBET
(zu dem Stammbüchlein Ihrer Königlichen Hoheit
der Prinzessin Elisabeth von Rumänien)

Editor și aranjament de
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Muzica: George Enescu
Versuri: Carmen Sylva

The image shows a musical score for 'Morgengebet' by George Enescu. It is a transcription for a trio consisting of voice, flute, and guitar. The score is in 4/4 time and features three staves. The tempo is marked 'Andante con moto' and the dynamics are 'mf dolce'. The music is in a major key and has a simple, lyrical melody. The guitar part provides a harmonic accompaniment with chords and arpeggios.

Fig.1. Plot musical text, George Enescu, "Morgengebet" transcription trio: voice, flute and guitar, (Ed. "Artes" - Iași, 2013)

3.1. Particularities of the transcription approach

The preoccupation with instrumental transcription has always been a painstaking labour that requires quite a long time both for editing and for correction. The number of corrections underway until the conventional "print ready" is the key of a successful and appreciated publication on the score market, which unfortunately is in its early stages on the Romanian territory. Acknowledged publishing houses edited scores containing typewriting and layout

errors; however their re-editing has brought fully deserved clarifications to the musical text.

3.2. ISBN or ISMN standardisation?

Nevertheless, it is hard to believe and accept that within a member country of the European Union we have the possibility to publish scores only with ISBN standardisation...

The steps I have taken towards the nationally empowered authorities are now in front of the persons appointed to achieve the score-specific standardisation – ISMN (International Standard Musical Number) [4]. It will probably take some time until we really harmonize with the European legislation likewise as regards the standardisation of the musical publications; however, for now, the classification of musical publications at international level and their integration within the publications known and renowned worldwide must wait for the establishment and observance of a transparent legislative frame, applied in agreement with the European standards.

4. Awareness and promotion of the Copyright and Related Rights Law

The steps taken towards the awareness of the *Copyright and Related Rights Law* need be a significant goal in the light of the performers and composers of instrumental creations, musical transcriptions and arrangements, as well as of the other categories of authors that legally fall under this law. The unawareness of this important law may lead to form and substance confusions as regards the interpretation of the legal text amended and supplemented subsequently to the initial promulgation [5].

4.1. Object of the copyright

The object of the copyright, according to Chap. 1, article 1, of the *Copyright and Related Rights Law* [1] is defined as follows; I quote: “*The copyright upon a literary, artistic or scientific work, as well as upon any such oeuvres of intellectual creation, is acknowledged and guaranteed under this law.*”

This right is related to the author and requires moral and patrimonial attributes” Starting from this clear-cut definition of the copyright, in article no. 2, the legislator stipulates: “*The recognition of the rights stipulated in this law is not detrimental to and exclusive of the protection provided by other statutory provisions*”. Therefore, the establishment of the frame for the integration of the instrumental transcription was regulated from the first articles of the law, and the clarification and centering of the legal text on the specification of the limits for the exercise of copyright are performed within the same law in Chap VI, Art. 33, lett. c):

“the utilisation of isolated papers or brief excerpts from oeuvres, in publications, in radio or television broadcasts and in sonorous or audiovisual recordings, exclusively destined for education, as well as the reproduction for educational purposes, in the framework of the public education or social-protection institutions, of isolated papers or brief excerpts from oeuvres, to the extent required by the purpose”;

O, rămâi

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Muzica: George Ștefănescu
Versuri: Mihai Eminescu

voce *Allegretto moderato* *mf*
O, ră-mâi, ră-mâi la mi-ne, Te iu

flaut *Allegretto moderato*

chitară *Allegretto moderato* *mp*

Fig. 2. Graphical representation musical text, George Ștefănescu - "O stay" trio, vocals, flute, guitar (Ed. "Artes" - Iași, 2013)

Further specifications are added to the same chapter VI, art. 33, lett. d) "*the reproduction for information and research purposes... the integral reproduction of a copy from an oeuvre is permitted, for its replacement, in case of destruction, serious deterioration or loss of the unique copy from the respective archive or permanent collection*" [6].

In this respect, many creations of Johann Sebastian Bach were printed based on more or less original manuscripts found in personal archives or libraries.

Their transcription from lute to guitar meant a priority for the conversion 'applied' from a noble instrument (lute) to a modern instrument – guitar of Antonio Torres type, with another tuning, another key for the scoring, other functionality features whereby the composer's initial intentions might be accurately kept.

The above mentioned example may be extended over the instrumental ensembles where the existence of a deteriorated material, for instance an old and degraded score of a manuscript with no heir alive, required the transcription or re-editing of the respective work, likewise falling under the copyright law. Consequently, the existence of a general score entails, as agreed upon by experts, the necessity of editing the parts afferent to the score

(general score, wherefrom those parts destined for each instrument, are excerpted) [7].

4.2. Institutional editorial approach

The absence of the didactic materials at the level of the specialized musical education, albeit all efforts made by the Ministry of National Education, is unanimously acknowledged, even if some branches of the Music field are better represented, for instance: piano, violin, canto, some blowing instruments; Starting from this reality - classical guitar - the guitar ensembles need more than ever a genuine development of the instrumental repertoire in order to become ever more competitive nationally and internationally.

The right to initiative, likewise stipulated in the Education Law, is an additional perspective for the university teaching staff. The awareness of the law and the framing of the institutional editorial approach may signify also in the future, as in the present, further knowledge for the students and further self-improvement for the specialized didactic staff.

The fact should not be omitted that scarcely any investments are made nationwide in the improvement of the teaching staff from the Music field. In this respect, as regards the limits of the copyright exercise, Chap. VI, Art. 33, lett i) stipulates:

"the scenic representation and performance of a musical work in the framework of the activities conducted within education institutions, exclusively for specific purposes and on condition both scenic representation or performance, and the audience's access be free of charge"[8].

The publishing houses that accepted to edit scores, transcriptions and original works or other musical texts and courses

held by the teaching staff undertook, along with the National Library of Romania and, obviously, together with the author, full responsibility as regards the publication of the didactic materials of benefit to the students, university teaching staff and other recipients.

Fig. 3. Text graphic music; Tiberiu Brediceanu - "Doina stâncuței", (Ed. "Artes" - Iași, 2013)

The mandatory nature of the *Copyright and Related Rights Law* is incidental on other institutional bodies that were created subsequently to the promulgation of this organic law.

To define the terminology used in the copyright law facilitates all authors assimilating the legislative frame that regulates their activity. In this respect, in Chap. III, on the object of the copyright, **Art. 8** stipulates: "*Without being detrimental to the authors' rights to the original work, there likewise make the object of the copyright, the derived works whose creation was started from one or several pre-existing works, namely:*

- a) *Translations, adaptations, annotations, documentary works, musical arrangements and any other transformations of a literary, artistic or scientific work, which represents an intellectual creative labour;*
- b) *Collections of literary, artistic or scientific works, such as:*
encyclopaedias and anthologies,

collections or compilations of materials or data, either protected or not, inclusively databases which, by their choice or layout of materials, are intellectual creations".

The observance of the aforementioned legal text must genuinely preoccupy all authors of musical texts and the adequately skilled and professionally trained persons to discharge these specific activities.

The transgress of the legal frame which regulates the publishing, editing and promotion of the didactic materials might be an approach of deliberate restriction on the access to knowledge, of the students and university teaching staff. This statement is grounded on *Copyright and Related Rights Law*, Chap. IV, *Content of the Copyright*, art. 10: "*The author of a work has the following moral rights:*

- a) *right to claim the quality of author of the work;*
- b) *right to decide under what name the work will be rendered publicly available*

I will draw, at the end of this work, a few personal conclusions on the framing of the instrumental transcription in *Copyright and Related Rights Law*:

- The bodies authorized to administer the copyrights, for instance UCMR-ADA and ORDA [9] are entities organized in compliance with the laws in force, which aim at defining and implementing the legislation in terms of granting the due patrimonial rights to performers, authors of musical works with or without text.
- The instrumental transcription of works pertaining to other composers is, under the law, copyright.
- The National Library of Romania provides standardisation and observes

the legislative frame for currently publishing instrumental transcriptions, courses, arrangements, original compositions and other didactic or commercial publications [10].

- The editing contract amiably agreed upon by the contracting parties establishes the legal frame for achieving the musical publications.
- The contract also specified the Court in whose jurisdiction amendments may be brought to the editing contracts and to other copyright-transfer contracts.
- More often than not, the author resorts to his/her own budgetary funds or to project funds, in order to achieve the specialized publications that fall under the *Copyright and Related Rights Law*.
- The responsibility for editing, transcribing, arranging, presenting and publishing is wholly incumbent on the author, defined in the *Copyright and Related Rights Law*, subsequently amended and supplemented [11].

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