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**GREEK LAW DIGEST**

**INDUSTRIAL & INTELLECTUAL
PROPERTY RIGHTS**



NOMIKI BIBLIOTHIKI

COPYRIGHT LAW

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What is Copyright Law?

Copyright Law comprises rules by which authors of literary, artistic and scientific works are protected. Neighbor to Copyright are certain analogous or 'related' rights that regulate the activities directly related to the creation of literary, artistic and scientific works, i.e. activities of the performers and of investors in the creation, such as phonogram and video producers, broadcasters and publishers (as well as publishers of long-secreted works).

Subsistence of Greek Copyright Law

Greek Copyright Law (2121/1993 as amended and now in force): comprises a non-exclusive list of works, i.e. literary (written or oral), dramatic, choreographies, pantomimes, musical, films and audiovisual works, photographs, artistic (fine art), architectural works, works of artistic craftsmanship, illustrations, maps, three-dimensional works related to geography, topography, architecture or science. Computer programs and databases (the latter defined by law as collections of independent works, data, or other materials arranged in a systematic way and individually accessible by electronic or other means) are also protected as special categories of works.

What are the conditions of acquiring Copyright protection?

Subject works need to be expressed in a certain form (written, oral, tangible) and need to be original. Once these two preconditions are met, Copyright is attributed and no formalities are required.

Originality is understood by Greek jurisprudence as a notion of "statistical uniqueness", which means that the work involves skill, labor and judgment emanating from the author and that no other person, acting under the same circumstances, could produce the exact same work.

For databases, originality is not a condition of protection, as this sui generis right is attributed to any entrepreneur who has made a substantial investment in obtaining, verifying and presenting the contents of a database.

What rights are attributed?

Pecuniary rights as well as moral rights are attributed to authors. Pecuniary rights include the rights of:

- fixation of their works,
- reproduction of their works,
- translation of their works,
- adaptation, arrangement, alteration of their works,
- distribution of the originals or copies of their works,
- rental and public lending of the originals or copies of their works,
- public performance of their works,
- broadcasting or re-broadcasting of their works,
- communication to the public of their works,
- making available to the public of their works
- import of copies of their works, in case they are produced abroad without the author's consent.

The rights attributed to databases, are the right of reproduction, translation, adaptation, arrangement, distribution, communication to the public or performance to the public of the database or of copies thereof.

Moral rights include five elements:

- right of publication,
- right of paternity,
- right to preserve the integrity of the work,
- right of access,
- right of rescission.

Works of fine art

Also, a resale right (*droit de suite*) is especially attributed to works of fine art, according to which a proportion on the price of each resale during the Copyright period has to be paid to the artist or his/her successors. Said proportion is 5% for sale prices up to 50,000.00 euro, 3% for prices from 50,000.01 to 200,000.00 euro, 1% for prices from 200,000.01 to 350,000.00 euro, 0,5% from 350,000.01 to 500,000.01 euro and 0.25% for prices exceeding 500,000.00 euro. Said royalty may not exceed the total of 12,500.00 euro.

What is considered to be a public performance/communication of the work?

The law itself defines as public performance/communication to the public, the act of making the work accessible to a circle of persons wider than the narrow family and social circle of the author, regardless of whether these persons are present at the same or at different locations.

Does Copyright protection have limits?

The first and most important of all the limitations to copyright protection is the duration of the right.

Term:

The general term for copyright in literary, dramatic, musical and artistic works is the author's life and 70 years thereafter. In case of a joint authorship, the term is measured from the death of the longest living co-author.

The term of protection for databases is shorter (15 years after its completion).

Limitations & Exceptions of Copyright

Further limitations are:

- the reproduction for private use which gives rise to an equitable remuneration calculated at a percentage of the value of devices/storage media (6% for devices/storage media for sound or/and images, 4% for photocopying machines/paper/storage media for printed material and 2% for computers). Said remuneration is unwaivable and subject to obligatory collective management. This limitation does not apply to databases,
- temporary acts of reproduction, transient or incidental, being essential part to the transmission in a network and having no independent economic significance,
- the quotation of short extracts (with indication of source and of the names of the author/s and producer/s),
- reproduction for school textbooks and anthologies,
- reproduction for information purposes on current events,
- reproduction for teaching,
- reproduction by non profitmaking libraries and archives and public lending right by school and academic libraries,
- reproduction for judicial or administrative purposes,
- reproduction for the benefit of Blind and Deaf-Mute,
- reproduction of films for preserving purposes by the National Cinematographic Archive,
- public performance on special occasions (official ceremonies, at an educational establishment within the framework of staff and pupils or student activities),
- use by the mass media of images of works sited in public places,
- exhibition and reproduction of works of fine art by museums
- certain acts concerning orphan works: communication to the public, reproduction for digitization purposes, making available to the public, indexing, cataloging, preservation or restoration acts by publicly accessible libraries, educational establishments, museums, archives, film or audio heritage institutions, public-service broadcasters, concerning orphan works in their collections.

These limitations only apply provided they meet the three-step-test standard, i.e.: they are linked and narrowly associated to a special purpose, they do not conflict with a normal exploitation of the work and they do not unreasonably prejudice the legitimate interests of the rightholder.

Exploitation of Copyright

Whereas the transfer, license or assignment of the exploitation of pecuniary rights is possible and has to take a written form (otherwise it is considered to be null and void, such nullity being only invoked by the author), transfer of all rights over the author's future works is prohibited. If a work is created by an employee in the execution of an employment contract, moral and pecuniary rights are attributed to the author (initial copyright owner), but, unless provided otherwise in the employment contract, those pecuniary rights that are necessary to fulfill the scope of the employment contract, shall be, or deemed to be, exclusively transferred to the employer.

Moral rights may not be transferred but may only be inherited by the author's heirs, who shall exercise the same according to the author's will, if explicitly expressed during his/her life. Also, the author may not assign or license to another the exercise of the moral rights on his behalf, but he/she may consent to certain ways of exercise of such rights, even by actions or omissions, that otherwise could possibly constitute an infringement.

Which are the Related rights?

Four categories enjoy the protection of related rights and a fifth, sui generis, right is included in the section of neighbor rights:

- performers
- producers of material carriers (audio and/or audiovisual)
- broadcasting organizations
- publishers of printed matter
- editors of previously unpublished works

Which rights are attributed to performers?

Performers are the only owners of neighbor rights to whom both pecuniary and moral rights are attributed.

Pecuniary rights: Performers enjoy the right to authorize or prohibit the:

- fixation of their performances,
- reproduction of their fixed performances,
- distribution of the fixation of their performances,
- rental and public lending of the fixation of their performances,
- broadcasting of the illegal fixation of the performances,
- broadcasting of their live performances,
- communication to the public of their live performances and
- making available to the public of fixations of their performances.
- In addition to these exclusive rights, performers enjoy a right of equitable remuneration in case the fixations of their performances are broadcast by any means, or communicated to the public. Such remuneration is unwaivable and subject to obligatory

collective management. Same remuneration right is attributed to them in case they authorize the producer to rent out their fixed performances.

Moral right: Performers also enjoy a moral right which comprises two powers: the right to be identified and credited as a performer (right of paternity) and the right to object to derogatory treatment of their performance.

Pecuniary as well as moral rights are non-transferable during the lifetime of the performer. The administration or protection of pecuniary rights may only be entrusted to collecting societies.

Which rights are attributed to producers?

Phonogram producers have the right to authorize or prohibit the reproduction, the distribution to the public, the rental, the public lending, the making available to the public and the import (if produced abroad) of their recordings. They also enjoy the right to equitable remuneration in case their sound recordings are broadcast or communicated to the public. This equitable remuneration is subject to obligatory collective management.

Audiovisual works' producers have the right to authorize or prohibit the reproduction, the distribution to the public, the rental, the public lending, the making available to the public, the import (if produced abroad), the broadcasting and the communication to the public of their recordings.

It is worth noting that sound recording covers any recording of literary, dramatic or musical work or other sounds (f.ex. bird song), while audio-visual recording is a recording on any medium from which a moving image can be produced.

Which rights are attributed to broadcasters?

Radio and TV broadcasters have the right to authorize or prohibit the transmission, the communication to the public, the fixation of their broadcasts, the reproduction of the fixation, the distribution to the public, the rental or public lending of such fixation of their broadcasts and the making available to the public of their broadcasts.

Which rights are attributed to publishers?

A right in the typographical arrangement of the published edition of a printed work, enabling to authorize or prohibit the reproduction of the printed format of their editions.

Which rights are attributed to publishers of long-unpublished works? Editors lawfully publishing or communicating to the public for the first time long-unpublished works, which have fallen in the public domain, receive similar to the author's pecuniary rights.

What is the term of protection of the related rights?

The term of protection varies according to the type of the related rights:

- Performers' right lasts for 50 years after the date of the performance, but this term may not be less than their life.
- Sound producers enjoy 70 years of protection after the first lawful publication or first lawful communication to the public, whichever occurs first (Greek law being harmo-

nized since 2013 (by law 4212/2013 art.3) with EU Dir 2011/77). If not published or communicated to the public, phonograms are protected for 50 years after their fixation.

- Audiovisual producers enjoy 50 years of protection after the fixation or first lawful publication or first lawful communication to the public, whichever occurs first.
- Broadcasting organizations enjoy 50 years of protection after the date of the first transmission of the broadcast.
- Publishers enjoy 50 years of protection after the date of the last edition of the work.
- Editors of previously unpublished works that have fallen in the public domain, enjoy of 25 years protection after the first lawful publication or communication to the public.

Enforcement of Copyright

Greek Law provides for provisional and precautionary measures and measures for preserving evidence in case of alleged infringement of copyright or related rights. Such measures are more stringent for infringements committed on a commercial scale (including the blocking of the alleged infringer's bank account). Law provides also for injunctions (aimed at prohibiting the continuation of the infringement) and compensation, such being most importantly the payment of damages by the infringer (who by intent or negligence engaged in an infringing activity) to the rightholder. Law also sets as minimum damages a lump sum, not less than twice the amount of royalties or fees which would have been due if the infringer had requested authorization to use the right in question. Further, sanctions of administrative and penal nature are also prescribed, liable persons being subject to imprisonment of not less than one (1) year and to a fine of 2.900-15.000 euro, while, if the financial gain sought or the damage caused, are particularly serious the imprisonment shall not be less than two (2) years and the fine from 6.000 to 30.000 euro.

Collective management

Collective management societies may be established under any legal form, as long as they fulfill one or both of the following criteria: (i) they are owned or controlled by their members, (ii) they are organized on a non-for-profit basis. Before commencing operations, they must notify their scope, statutes, the number of rightholders represented and other specified data to the Ministry of Culture which then issues a decision approving its operation. Collecting Societies negotiate rates and terms of use, conclude contracts with the users, issue licenses authorizing uses, collect and distribute remuneration. They act on behalf of rightholders and exercise all administrative, judicial and extrajudicial acts necessary for their protection and they are granted with a presumption that they lawfully represent all repertoire/rightholders they claim to. Since July 2017 a new law is in force (4481/2017) harmonizing national legislation with Directive 2014/26/EU "on the collective management of copyright and related rights and multi-territorial licensing in musical works for online use in the internal market" (EE L 84). Said law introduces a new type of management body, i.e. independent management entities and repeals art. 54-58 of Law 2121/1993, providing exhaustive regulation on copyright management and multi-territorial licensing of online for musical works.

Is Greek Law in harmony with Copyright International Treaties and EU acquis?

Greece has ratified the Berne Convention (as amended by the last amendment in Paris 1971) by law 100/1975, the Rome Convention by law 2054/1992, TRIPS by law 2290/1995, the Geneva Convention for Phonograms by law 2148/1993, the Brussels Satellites Convention by law 1944/1991, the Work Copyright Treaty (WCT) by law 3184/2003 and the WIPO Performance and Phonograms Treaty (WPPT) by law 3183/2003. Greek law is harmonized with all European Directives i.e.: 91/250 Computer programs, 92/100 Rental & Public Lending, 93/83 Satellite & Cable, 93/98 Term of protection, 96/9 Databases, 2001/29 Information Society, 2001/84 Resale right, 2004/48 I.P. Enforcement, 2006/115 Rental & Lending (codification of Dir 92/100), 2006/116 Term of protection (amendment and codification of Dir 93/98), 2009/24 Computer programs (codification of Dir. 91/250), 2011/77 Term of Protection (extension of protection for sound recordings), 2012/28 Orphan works. National legislation is also in compliance with Directive 2014/26 on Collective Management & Multi-territorial licensing, via law 4481/2017, being in parallel force with the main Copyright Act (Law 2121/1993, as amended).

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