

COPYRIGHT AND RELATED RIGHTS

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Law no. 8/1996 on copyright and neighboring rights, published in the Official Gazette no. 60/26th of March 1996
- Government Decision no. 758/2003 for the approval of the Organizing and functioning regulation of the Romanian Copyright Office and of the arbitrators, published in the Official Gazette no. 492/8th of July 2003

I. Copyright

In Romania, copyright on a literary, artistic or scientific work and on all such intellectual creation works as well as neighboring rights are recognized and guaranteed by the Law no.8/1996 on copyright and neighboring rights.

1. Ownership of Copyright

The natural person or persons who created the work shall be the author thereof. Unless proved otherwise, the person under whose name the work was first disclosed to the public shall be presumed to be the author thereof.

Where the work was disclosed to the public anonymously or under a pseudonym that does not identify the author, the copyright shall be exercised by the person whether natural person or legal entity who discloses it to the public with the author's consent, as long as the latter does not disclose his identity. In cases expressly provided for by law, legal entities and natural persons other than the author may benefit from the protection granted to the author.

A work of joint authorship shall be a work created by several co-authors in collaboration. The copyright in a work of joint authorship shall belong to the co-authors thereof, one of whom may be the main author as provided in this Law. Unless otherwise agreed, co-authors may only exploit the work by common consent.

A **collective work** shall be a work in which the personal contributions of the co-authors form a whole, without it being possible, in view of the nature of the work, to ascribe a distinct right to any one of the coauthors in the whole work so created. Unless otherwise agreed, the copyright in a collective work shall belong to the person, whether natural person or legal entity, on whose initiative and responsibility and under whose name the work was created.

2. Copyright subject matter

The subject matter of copyright shall be original works of intellectual creation in the literary, artistic, or scientific field, regardless of their manner of creation, specific form or mode of expression and independently of their merit and purpose, such as:

- (a) literary and journalistic writings, lectures, sermons, pleadings, addresses and any other written or oral works, and also computer programs;
- (b) scientific works, written or oral, such as presentations, studies, university textbooks, school textbooks and scientific projects and documentation;
- (c) musical compositions with or without words;
- (d) dramatic and dramatic-musical works, choreographic and mimed works;
- (e) cinematographic works and any other audiovisual works;
- (f) photographic works and any other works expressed by a process analogous to photography;
- (g) works of three-dimensional art such as: works of sculpture, painting, drawing, engraving, lithography, monumental art, stage design, tapestry, ceramics, glass and metal shaping, and also works of art applied to products intended for practical use;
- (h) works of architecture, including sketches, scale models and the graphic work that constitutes an architectural project;
- (i) three-dimensional works, maps and drawings in the field of topography, geography and science in general.

Without prejudice to the rights of the authors of the original work, copyright shall likewise subsist in derived works created on the basis of one or more pre-existing works, namely:

(a) translations, adaptations, annotations, documentary works, arrangements of music and any other transformation of a literary, artistic or scientific work that themselves entail creative intellectual effort;

(b) collections of literary, artistic or scientific works, such as encyclopaedias, anthologies and collections and compilations of protected or unprotected material or data, including databases, which, by reason of the selection or arrangement of their subject matter constitute intellectual creations.

The following shall not benefit from the legal protection accorded to copyright:

(a) the ideas, theories, concepts, discoveries and inventions contained in a work, whatever the manner of the adoption, writing, explanation or expression thereof;

(b) official texts of a political, legislative, administrative or judicial nature, and official translations thereof;

(c) official symbols of the State, public authorities and organizations, such as armorial bearings, seals, flags, emblems, shields, badges and medals;

(d) means of payment;

(e) news and press information;

(f) simple facts and data.

3. Rights of an author of a work

Copyright content is usually made up from moral and economic rights.

3.1 Moral rights

The author of a work shall have the following moral rights: to decide whether, how and when the work will be disclosed to the public; to demand recognition of his authorship of the work; etc. The moral rights may not be renounced or disposed of.

3.2 Economic rights

. The author of a work shall have the exclusive economic right to decide whether, how, and when his work is to be used or exploited, including the right to authorize the use of the work by others. The use or exploitation of a work gives the author distinct and exclusive rights to authorize: complete or partial reproduction of the work; dissemination of the work; importation, for marketing on the territory of Romania, of copies of the work made with the author's consent; transmission of a work to the public by wire, cable, optic fiber or any other means; communication to the public by means of sound and audiovisual recordings; secondary dissemination; presentation in a public place.

4. Duration of copyright protection

The copyright in a literary, artistic or scientific work shall come into being at the time of the work's creation, regardless of the specific form or manner of expression thereof.

Duration of economic rights' protection:

- a) The economic rights shall last for the author's lifetime, and after his death shall be transferred by inheritance, for a period of 70 years for works published by the author published during his lifetime;
- b) The person who legally discloses a previously unpublished work by the author or by his heirs to the public shall enjoy protection for a period of 25 years, starting at the time of the first legal disclosure to the public.
- c) In works disclosed to the public under a pseudonym or without a mention of the author's name shall be 70 years from the date on which they were disclosed to the public.
- d) The term of the economic rights in works of joint authorship shall be 70 years from the death of the last surviving co-author. Where the contributions of the co-authors are distinct, the term of the economic rights in each such contribution shall be 70 years from the death of the author thereof.
- e) In collective works shall be 70 years from the date of disclosure of the works.

- f) The term of the economic rights in works of applied art shall be 25 years from the creation thereof.
- g) The economic rights in computer programs shall last for the lifetime of the author thereof and after his death shall be transferred by inheritance, according to civil legislation, for a period of 50 years.

The effects of the expiring of the duration of copyright protection are the following ones:

- the passing of the work in public domain, following for it to pertain to humanity common patrimony;
- its free and free of charges exploitation by anyone.

5. Limitations on the exercise of copyright

The following uses of a work already disclosed to the public shall be permitted without the author's consent and without payment of remuneration, in one of the forms provided for by Art. 33 paragraph 1 from Law no. 8/1998, from which we enumerate:

- the reproduction of a work in connection with judicial or administrative proceedings, to the extent justified by the purpose thereof;
- the use of brief quotations from a work for the purpose of an analysis, commentary or criticism, or for illustration, to the extent justified by use thereof;
- the use of isolated articles or brief excerpts from works in publications, television or radio broadcasts or sound or audiovisual recordings exclusively intended for teaching purposes and also the reproduction for teaching purposes, within the framework of public education or social welfare institutions, of isolated articles or brief extracts from works, to the extent justified by the intended purpose;

All uses provided from in Art. 33 paragraph 1 from Law no.8/1996 upon fulfillment of the following **conditions**: to comply with good customs, not to violate the normal exploitation of the work, not to bring prejudice to the author or to the right holders of exploitation rights.

6. Copyright transfer

The author or the owner of the copyright may transfer only his economic rights by contract to other persons. That transfer of the author's

economic rights may be limited to certain rights, to a certain territory, and to a certain period of time.

In the situation of the works created within the individual labor contract, economic rights belong to the author of the work, except the situation in which the contract has a contrary clause. In the absence of the stipulation of the period for which the economic rights were transferred, it is of 3 years from the date of the delivering of the work. Upon expiration of such period, the economic rights are due to the author.

The assignment of one of the patrimonial rights of the copyright holder has no effect on the other rights of his, if not provided otherwise.

Any transfer of the economic rights in all of the author's future works, whether designated or not, shall be null and void.

The economic rights of the author or the owner of the copyright may be passed on by exclusive or non-exclusive transfer.

In the case of **exclusive transfer**, not even the owner of the copyright shall be allowed to use the work in the manner, on the territory and for the term agreed with the transferee, or to transfer the rights concerned to another person. The exclusive character of the transfer shall be expressly stated in the contract.

In the case of a **non-exclusive transfer**, the owner of the copyright may use the work himself, and may also transfer the non-exclusive right to other persons. The non-exclusive transferee may not transfer his rights to another person without the express consent of the transferor. Such consent shall not be required where the transferee is a legal entity and is transformed by one of the processes provided for by law.

6.1 Form of the Contract of Copyright transfer

Law no. 8/1996 provides for the condition for the validity of the contract of copyright transfer its conclusion in writing and the including of compulsory mentions, whose inexistence is sanctioned with the nullity of the contract. Compulsory mentions refer to the economic rights transferred, the forms of exploitation, the duration and scope of the transfer and the remuneration payable to the copyright owner. The absence of any of these elements shall entitle the interested party to apply for cancellation of the contract.

6.2 Price of the contract

The remuneration payable under a contract for the transfer of economic rights shall be established by agreement between the parties. Where the

remuneration has not been fixed by contract, the author may request the competent jurisdictional bodies to do so, as provided by law.

6.3 Cancellation of the contract of copyright transfer

The author may request the cancellation of the contract if:

- the transferee does not exploits him or exploits him insufficiently;
- if the grounds for non-exploitation or insufficient exploitation are not attributable to him, to a third party, to an accident or to *force majeure*.
- By failure to exploit or insufficient exploitation, the author's legitimate interests are seriously affected.

Cancellation of a contract of assignment under paragraph (1) may not be requested before two years have expired following the assignment of the economic rights in a work. That period shall be three months in the case of works assigned for daily publications, and a year in the case of periodical publications. The author may not waive in advance the exercise of his right to request cancellation of the transfer contract.

II. Neighboring rights

Recognition and protection as owners of neighboring rights shall be accorded to performers in respect of their own performances, to producers of sound recordings in respect of their own recordings and to radio and television broadcasting organizations in respect of their own broadcasts.

Neighboring rights shall not prejudice the rights of authors.

The performer shall have the exclusive economic right to authorize:

- (a) the fixing of his performance;
- (b) the reproduction of the fixed performance;
- (c) the distribution of the fixed performance by sale, rental, lending or any other mode of transfer for a consideration or free of charge;
- (d) the presentation in a public place or communication to the public of the performance, either unfixed or fixed on a physical medium;
- (e) the adaptation of the fixed performance;
- (f) the broadcasting or transmission by television or radio of his rendering, either unfixed or fixed on a physical medium, or the retransmission thereof by wireless means, by wire, by cable, by satellite or by any other similar procedure.

The duration of the economic rights of performers shall be 50 years from the first of January of the year following that in which the first fixing, or, failing that, the first communication to the public took place.

The producer of sound recordings shall have the exclusive economic right to authorize:

- (a) the reproduction of his own sound recordings;
- (b) the distribution of his own sound recordings by sale, rental, lending or any other mode of transfer for a consideration or free of charge;
- (c) the broadcasting or transmission by television or radio of his own sound recordings, or the retransmission thereof by wireless means, by wire, by cable, by satellite or by any other similar procedure or means of communication to the public;
- (d) the presentation in a public place of his own sound recordings;
- (e) the adaptation of his own sound recordings; the importation into the territory of Romania of legally-made copies of his own sound recordings.
- (f) the importation of copies of his own sound recordings legally made.

The producer of sound recordings shall also have the exclusive economic right to prevent the importation of copies of his own sound recordings made without his authorization.

The duration of the economic rights of producers of sound recordings shall be 50 years from the first of January of the year following that in which the first fixing takes place.

The authors of sound or audiovisual works recorded on any kind of physical medium shall have the right, together with the publishers and producers of the said works and the performers whose performances are fixed on such physical media, to remuneration for the private copying done under the conditions of the Law. The remuneration shall be paid by the manufacturers or importers of physical media susceptible of use for the reproduction of the works, and by the manufacturers or importers of devices serving for such reproduction. The remuneration shall be distributed as follows, through the relevant collective administration organizations, among the authors, performers, publishers and producers involved, subject to conditions provided for in the Art. 107 paragraph 3 of the Law no. 8/1996.

III. Sanctioning regime

Violation of rights recognized and guaranteed by the Law no.8/1996 shall make the offender guilty of a civil or criminal offense or of a misdemeanor, as the case may be. Contraventions and offenses in the field of copyright and neighboring rights are provided for by Law no.8/1996, together with their establishing and sanctioning. For example:

“It shall be an offense and punishable with imprisonment for three months to five years, or a fine of lei 500,000 to lei 10 million, except where the act constitutes a more serious offense, for a person improperly to assume the

authorship of a work or to disclose a work to the public under a name other than the one decided upon by the author.”