



ICLG

The International Comparative Legal Guide to:

Copyright 2016

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A practical cross-border insight into copyright law

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1 Copyright Subsistence

1.1 What are the requirements for copyright to subsist in a work?

Under Greek Law on Copyright, Related Rights and Cultural Matters (hereinafter: Greek IP Law), a work is identified as any original intellectual literary, artistic or scientific creation, expressed in any form. The definition given above signifies that a work must be the result of an individual's intellectual activity, be perceptible by senses, thus ideas, concepts, principles or methods are excluded from protection, and further be original, in the meaning of uniqueness. A work is considered unique when it features individual singularity or is defined by a given minimal degree of creativity in a way that is distinguished from what is already known and existent. The meeting of said requirements is ascertained on a case-by-case basis. A work relishes protection under Greek IP Law irrespective of its aesthetic value, purpose or its protection by virtue of other provisions of Greek Law.

1.2 On the presumption that copyright can arise in literary, artistic and musical works, are there any other works in which copyright can subsist and are there any works which are excluded from copyright protection?

Greek IP Law provides an exemplary and non-exhaustive list of copyright protectable works, such as written or oral texts, musical compositions with or without words, theatrical works, choreographies and pantomimes, audio-visual works, works of fine art, works of architecture and photographs, works of applied art, illustrations, maps and three-dimensional works relative to geography, topography, architecture or science, as well as translations, adaptations, arrangements and other alterations of works and collections of works. Copyright can further subsist in databases, by reason of the selection or arrangement of their contents, as well as in computer programs and their preparatory design material. No protection is reserved for official texts, in which the state authority is reflected, nor for traditional cultural expressions, news information and simple facts or data.

1.3 Is there a system for registration of copyright and if so what is the effect of registration?

Under Greek IP Law no system for copyright registration exists. As per article 2 of the Greek IP Law, the rights are vested in the creator

of a work without having to resort to any formality. Namely, the protection commences right from the moment of creation, without being necessary that the work has been completed. In practice, authors may seek registration of their material or work, such as filing with a notary public. Said filing serves solely as evidentiary purposes, i.e. for securing proof of their ownership and priority, and is not at all related to the copyright existence itself. Likewise, the registration procedures dictated by specific legislative acts are not related to copyright ownership but are destined for preservation of cultural heritage.

1.4 What is the duration of copyright protection? Does this vary depending on the type of work?

Copyright protection lasts for the whole of the author's life and for seventy (70) years after his death, calculated from 1 January of the year after his death. After the expiry of the period of copyright protection, the State, represented by the Minister of Culture, may exercise the rights relating to the acknowledgment of the author's paternity and the rights relating to the protection of the integrity of the work deriving from the moral rights. In case of works of joint-authorship (see further below in question 2.4) and musical compositions with lyrics, if both the contributions of the composer and the author of the lyrics were specifically created for the respective musical composition with lyrics, the term of protection shall last throughout the life of the last surviving author and seventy (70) years after his death, calculated from 1 January of the year that follows the death of the last surviving author. For given types of protectable works, such as pseudonymous and anonymous works, the commencement of the 70-year term is otherwise stipulated by law. The protection of the related rights of performers, phonograms producers, audio-visual producers, broadcasting organisations, etc. expires, in principle, (50) years after the date of the performance, fixation or broadcasting, respectively; yet, in certain cases prescribed in Greek IP Law, said protection may extend to seventy (70) years.

1.5 Is there any overlap between copyright and other intellectual property rights such as design rights and database rights?

Said overlap may be found in works of applied arts, i.e. these types of work may relish protection both as copyright protectable works and as designs or utility patents, provided that the requirements for such kind of protection are met. The same applies to logos, which, besides being eligible for copyright protection, they can be further protected under the Law on Unfair Competition.

1.6 Are there any restrictions on the protection for copyright works which are made by an industrial process?

No restrictions apply to copyright protection in terms of the means used for creating the work.

2 Ownership

2.1 Who is the first owner of copyright in each of the works protected (other than where questions 2.2 or 2.3 apply)?

First owner of copyright is the individual, the natural person that created the work. In the case of collective works, as the case is with the audio-visual works, the initial copyright owner is the individual undertaking the coordination and the intellectual guidance of the single contributions, e.g. in the case of films, the director. In principle, legal entities can only derivatively become owners of copyright. Until proven otherwise, the person who lawfully makes available to the public anonymous or pseudonymous works is deemed as the initial copyright owner towards third parties.

2.2 Where a work is commissioned, how is ownership of the copyright determined between the author and the commissioner?

In the case of commissioning, copyright ownership is again reserved for the author of the work, unless otherwise contractually agreed.

2.3 Where a work is created by an employee, how is ownership of the copyright determined between the employee and the employer?

Where a work is created by an employee in the execution of an employment contract, the copyright vests again in the employee as the author of the work. Yet, unless provided otherwise by contract, such economic powers as are necessary for the fulfilment of the purpose of the contract are *ipso jure* transferred to the employer.

The economic powers on works created by employees under any work relation of the public sector or a legal entity of public law in execution of their duties are *ipso jure* transferred to the employer, unless otherwise provided by contract.

2.4 Is there a concept of joint ownership and, if so, what rules apply to dealings with a jointly owned work?

Where a work is the result of the direct collaboration of two or more authors, meaning that their contributions are assimilated into the work and they cannot be separately exploited, then joint ownership applies. In this case, the co-authors of the work are the initial copyright owners and for any dealings concerning the jointly owned work, the unanimous consent of all co-owners is required.

3 Exploitation

3.1 Are there any formalities which apply to the transfer/assignment of ownership?

The economic (exploitation) rights can be transferred or assigned

inter vivos as well as by inheritance. Moral rights can only be transferred to the heirs of the author following the latter's death. The assignment of economic rights can be limited in terms of extent, content, term, territory, etc. In any case, such transfer/assignment agreement has to be recorded in writing, otherwise the author alone may invoke its nullity towards third parties.

3.2 Are there any formalities required for a copyright licence?

Again the written form is a precondition for the validity of the agreement. Failure of compliance results in relative nullity in favour of the author.

3.3 Are there any laws which limit the licence terms parties may agree (other than as addressed in questions 3.4 to 3.6)?

The parties to a licence agreement besides any restrictions dictated by Greek IP Law, e.g. with respect to amount of royalties, have, in principle, to comply with general provisions of civil law of contracts (e.g. principles of good faith and business customs), as well as with Greek antitrust law.

3.4 Which types of copyright work have collective licensing bodies (please name the relevant bodies)?

The management and protection of author's rights and related rights can be carried out either individually by each beneficiary, separately or collectively, through the Collecting Societies (CS) and the Collective Protection Societies (CPS). At present, there are 18 CS in Greece and two CPS that are all licensed by the Minister of Culture and Sports and supervised by the Hellenic Copyright Organization. The collective licensing societies are the following:

- A.E.P.I. S.A. – Composers / Lyricists.
- ATHINA – Directors / Scriptwriters.
- AUTODIAXEIRISI – Composers / Lyricists.
- THESPI – Theatrical Writers / Translators of Theatrical Plays.
- ISOCRATIS – Photography Directors / Stage Designers / Costume Designers / Sound Engineers / Film Editors.
- O.S.D.E.E.T.E. – Authors of fine arts.
- O.S.D.E.L. – Writers / Publishers.
- PHOEBUS – Photographers.
- APOLLON – Musicians.
- DIAS – Producers of audio-visual works.
- DIONYSOS – Actors.
- ERATO – Singers and Performers.
- HERMIAS – Producers of motion pictures.
- GRAMMO – Producers of phonograms.
- IRIDANOS – Producers of audio-visual works.
- PROMEDIA – Producers of audio-visual works.
- TILEOPTIKA DIKAIOMATA – Related rights of broadcasting organisations and producers of audio-visual works.
- GEA – Sound.

3.5 Where there are collective licensing bodies, how are they regulated?

The collective licensing bodies are regulated by law and in particular by articles 54-58 of Greek IP Law. By virtue of said provisions, collective licensing bodies must have as their exclusive objective the management or protection or management and protection of the economic powers of copyright. Collective licensing bodies can operate in any legal form. They are subject to supervision by the Hellenic Copyright Organization, the Ministry of Culture, as well as the Competition Commission.

3.6 On what grounds can licence terms offered by a collective licensing body be challenged?

Licence terms are established by the respective collective licensing bodies unilaterally. Yet, terms offered must be reasonable and fair, comparable to those offered in similar cases. Otherwise, an end user is entitled to challenge offered terms before Courts or an arbitrator designated by parties or by the Minister of Culture.

4 Owners' Rights

4.1 What acts involving a copyright work are capable of being restricted by the rights holder?

The copyright grants to its owner absolute rights; the author can decide whether or not, and to what extent, his protected work may be exploited by third parties and can prevent others from carrying out all kinds of material exploitation.

4.2 Are there any ancillary rights related to copyright, such as moral rights, and if so what do they protect, and can they be waived or assigned?

Besides the exploitation rights, the intellectual property conveys on to its author moral rights. Moral rights entitle the author *inter alia* the following:

- a) to decide on the time, place and manner in which the work shall be made accessible to the public (publication);
- b) to demand that such disclosure should be effected in his/her own name, or that his work be presented under a pseudonym or anonymously;
- c) to prohibit any distortion, mutilation or other modification of his work and any offence to the author; d) to have access to his work; and
- e) in the case of a literary or scientific work, to rescind an exploitation or transfer contract, should such action be necessary for the protection of his personality because of changes in his beliefs or in the circumstances.

Said powers cannot be waived or assigned, they can only be restricted to the extent necessary for the exercise of the exploitation rights. In any case, the core of the moral rights should remain unaffected, otherwise the contract may be rendered void.

4.3 Are there circumstances in which a copyright owner is unable to restrain subsequent dealings in works which have been put on the market with his consent?

According to the principle of exhaustion, the author's right to seek to restrict distribution of a work on copyright grounds is exhausted

as soon as the work has been put into circulation on the market for the first time by or with consent of the right-holder in one of the EU Member States or in a State that is a party to the Agreement on the European Economic Area. Onwards, the owner cannot object to their distribution anywhere else in the EU.

5 Copyright Enforcement

5.1 Are there any statutory enforcement agencies and, if so, are they used by rights holders as an alternative to civil actions?

No statutory enforcement agencies exist in Greece. Upon request of the right holder, custom authorities may seize goods that seem to infringe on intellectual property rights.

5.2 Other than the copyright owner, can anyone else bring a claim for infringement of the copyright in a work?

Claims for infringement of the copyright in a work can be brought before Courts by the author and respectively his universal successors, as well as his special successors (assignee or licensee). In the latter case, where the licence is granted on a non-exclusive basis, it has to be ascertained whether such enforcement rights have been conveyed to the licensee. Besides the above, the Collective Licensing Body that has undertaken the management of the exploitation rights of the author is further entitled to assert said claims.

5.3 Can an action be brought against 'secondary' infringers as well as primary infringers and, if so, on what basis can someone be liable for secondary infringement?

Copyright owners may apply for an injunction against intermediaries, whose services are used by a third party to infringe a copyright or related right. The same applies to the right of a database maker. Said infringement may consist in un-licensed work presentation in a website or be effected through illegal file sharing (peer to peer).

Besides, Greek IP Law stipulates technological measures for ensuring that preparatory and contributory actions for the infringement on copyright are prevented; the circumvention of said measures constitute "secondary infringement" and could induce penetrator's liability. Unfortunately, the technical specifications and measures have not yet been introduced, since the relevant enactment acts have not yet been issued.

Any other acts facilitating copyright infringement cannot qualify *per se* as infringement, but only under general civil law provisions on tort law.

5.4 Are there any general or specific exceptions which can be relied upon as a defence to a claim of infringement?

Greek IP Law provides for exceptions, known as limitations of the exploitation powers of right-holder that can be invoked against an infringement claim. In particular, there are cases, where the use of copyright is permissible without the right-holder's consent and sometimes even without the payment of royalties, e.g. reproduction for private use, quotation of extracts of lawfully published works, reproduction of lawfully published works in educational textbooks, reproduction in anthologies of literary lawfully published works after the author's death, reproduction of lawfully published articles

in newspapers or journals, of short extracts of a work or parts of a short work or a lawfully published work of fine art exclusively for teaching or examination purposes at an educational establishment, reproduction by libraries and archives, reproduction for judicial or administrative purposes and for information purposes, occasional reproduction and communication by the mass media of images of architectural works, fine art works, photographs or works of applied art, which are sited permanently in a public place, certain permitted uses of orphan works, exhibition and reproduction by museums of works of fine art, reproduction for the Benefit of Blinds and Deaf-mute, etc. Besides, temporary acts of reproduction that are transient or incidental and form an integral and essential part of a technological process and whose sole purpose is to enable: a) a transmission in a network between third parties by an intermediary; or b) a lawful use of a work or other protected subject-matter, which have no independent economic significance, shall be exempted from the reproduction right. As a general rule, Greek IP Law stipulates that the limitations shall only be applied in certain special cases, which do not conflict with a normal exploitation of the work or other protected subject-matter and do not unreasonably prejudice the legitimate interests of the right-holder.

5.5 Are interim or permanent injunctions available?

Yes, both interim as well as permanent injunctions are available. Interim injunctions include *inter alia* precautionary seizure, inventory or photographing of items allegedly infringing IP rights or even preliminary measures for the prevention of future infringements, where imminent danger is existent. There is no need to specify the works infringed or in threat of infringement. In ordinary proceedings the right-holder may file an action for permanent injunctions and in particular may claim the recognition of authorship, the cease of the infringement through withdrawal or even destruction of the products infringing IP rights and the desist of the infringement in the future, as well as compensation and moral damages.

5.6 On what basis are damages or an account of profits calculated?

As per Greek IP Law, the compensation for damages cannot be less than twice the legally required or normally payable remuneration for the form of exploitation, which the infringing party has effected without a licence. Said rule is widely applied by the Greek Courts.

5.7 What are the typical costs of infringement proceedings and how long do they take?

Costs of infringement proceedings vary depending on the case, i.e. the legal and factual circumstances and the value of the subject matter. Issuance of the court order in first instance proceedings takes approximately one to two years from hearing. Since 1 January 2016, extensive amendments have been made to the Greek Code of Civil Procedure, which are expected to accelerate judicial proceedings.

5.8 Is there a right of appeal from a first instance judgment and if so what are the grounds on which an appeal may be brought?

Each litigant party is granted a right of appeal. Said appeal can be brought on any ground pertaining to the legal basis, such as wrong interpretation of legal provisions, or the merits of the case, e.g. wrong evaluation of means of evidence.

5.9 What is the period in which an action must be commenced?

The time period for bringing an action before Courts greatly depends on the cause of the claim asserted. To that effect, the compensation claim due to infringement of IP or related rights is time-barred after the lapse of five years from the point of knowledge of the unlawful act and in any case after the lapse of 20 years from its commitment. The same limitation of time applies to the cease and desist claim as well as to the claim for moral damages. Claims based on unjustified enrichment provisions are, however, subject to a limitation of 20 years.

6 Criminal Offences

6.1 Are there any criminal offences relating to copyright infringement?

The unlawful fixation of works or copies, direct or indirect reproduction, temporarily or permanently in any form, in whole or in part, translation, adaptation, alteration or transformation thereof, or distribution to the public by sale or other means, or possession with the intent of distribution, renting, performance in public, broadcasting by radio or television or any other means, communication to the public of works or copies by any means, import of copies of a work illegally produced abroad without the consent of the author and, in general, exploitation of works, reproductions or copies being the object of copyright or acts against the moral right of the author to decide freely on the publication and the presentation of his work to the public without additions or deletions, constitute among others criminal offences. Likewise, the infringement on related rights, e.g. on the rights of performers, producers of phonograms, etc. and on database rights, as well as the circumvention of technical measures designed to protect a work, the failure of compliance with technical standards and the unauthorised use of computer programs are also criminalised. The criminal prosecution takes place *ex officio*.

6.2 What is the threshold for criminal liability and what are the potential sanctions?

As per Greek Case Law, criminal liability presupposes wilful intent, meaning the perpetrator's awareness of the elements of the offence and his will to commit such. Criminal liability exists even in the case of *dolus eventualis*, which is present when the perpetrator objectively foresees the possibility of his act causing the consequences and persists regardless thereof. Potential sanctions include imprisonment of at least one year and a monetary penalty varying from 2,900 to 15,000 Euro, while in the case of aggravated crime forms, the perpetrator is threatened with a life sentence, a monetary penalty up to 58,694.06 Euro and withdrawal of operation licence.

7 Current Developments

7.1 Have there been, or are there anticipated, any significant legislative changes or case law developments?

Within 2015 a draft law was prepared for the transposition of the Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright

and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. As per the said draft law, new rules are introduced for the improvement of the operation of the collective bodies, with a view to the principle of transparency at the management of IP and related rights aiming at the achievement of a high level of reporting. Besides, the draft law provides for alternative dispute resolutions procedures, whereby the right of the parties to seek judicial protection remains unaffected. Among other provisions, what is worth further mentioning, is the one setting forth a special fee amounting to 2% of the value of each PC and 4% of the value of each tablet for IP rights, as a consideration for the royalties not collected due to piracy in the internet. It remains to be seen to what extent the said draft law will ultimately become national law.

Recent case law developments mostly pertain to digital content; brief notice is made in this regard below.

7.2 Are there any particularly noteworthy issues around the application and enforcement of copyright in relation to digital content (for example, when a work is deemed to be made available to the public online, hyperlinking, etc.)?

As per the decision no. 13478/2014 of Civil Court of Athens, the action for interim injunction filed by collective bodies, as per which it was sought that internet service providers be obliged to take measures, such as to block visits to websites offering unlawful torrents or alternatively interdict the downloading, was dismissed. In particular, the Court ruled that the adoption by the internet service providers of said measures for the blocking of the

subscribers/users of the internet from websites for the purpose of combating the illegal exploitation of copyright protected works is incompatible with the constitutional principle of proportionality and with the freedom of information and the right of participation in the information society, since it does not meet the criteria of necessity and suitability, not even for the partial achievement of the desired purpose. In the Court's reasoning it is *inter alia* maintained that the requested blocking measure (automatic filtering mechanism) not only would block the visit to illegal websites but also to websites offering lawfully published works would take place.

In the matter of hyperlinking, the Multimember Civil Court of Athens as per its decision no. 5249/18.12.2014, aligning with the most recent CJEU case law, held that, insofar as the access to a protected work, uploaded in a website, has been set free by the right-holder, in the meaning that no technological measures for its protection or limited access have been applied, then the use of hyperlinks referring to said website is admissible. Said hyperlinking does not constitute reproduction, since the hyperlink makes content available that has already been made freely accessible to the public via the internet upon the author's authorisation.

Lastly, the Single Member Court of Appeal of Thessaloniki recently ruled as per its decision no. 488/2015 that the uploading of an audio-visual work (video) by its author to internet channels, such as YouTube, does not constitute a waiver on the author's part of any economic right of exploitation of said work. Furthermore, no reference to the interdiction of exploitation of said work without the author's consent is necessary, since the foregoing is expressly stipulated in the terms of the use of said channels.

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