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Copyright

in Greece



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Recent developments

Legal developments

Have there been any notable recent legal developments regarding copyright in your jurisdiction, including any regulatory changes and recent case law?

Law 4481/2017 on the Collective Management of IP Rights and Related Rights, Multi-Territorial Licences for Online Uses of Musical Works and Other Issues Falling Within the Competence of the Ministry of Culture and Sport recently entered into force. The main purpose of the first part of this law is to harmonise Greek legislation with EU Directive 2014/26/EC (EE L 84).

Law 4481/2017 has amended the primary legislation governing copyright in Greece (Law 2121/1993) and introduced provisions for protecting and collectively managing IP and related rights. The new rules aim to improve the operation of collective bodies in order to:

- improve transparency in IP and related rights management; and
- achieve high-level reporting.

The law sets out additional rules for granting multi-territorial licences for using online musical works and alternative dispute resolutions procedures, while parties' rights to seek judicial protection remain unaffected.

Among other provisions, the law imposes a fair compensation levy at 2% of a computer device's value as remuneration for uncollected royalties which result from internet piracy.

Recent case law has addressed the so-called 'communication to the public' right, largely within the context of hyperlinks. This is one of the most controversial issues in recent EU copyright law, alongside digital content exploitation and hosting service provider activity.

The European Court of Justice's decision in *GS Media BV v Sanoma (C-160/15)* was applied by the Athens Court of Appeal in a decision (1909/2017) which dealt with the legal assessment of hyperlinks. Applying the Svensson 'new public' criterion, the court accepted that placing hyperlinks to legally published and freely accessible online works did not meet the criteria of 'making available to the public'.

The court reasoned that the public to which the works were made available in this case was accounted for by the rights holders when they gave their consent to the initial making available to the public, rather than a new public (the same applied to links using the framing technique).

The court also held that the hyperlinks were not placed for profit making. When determining 'public presentation' within the meaning of Article 3(1) of EU Directive 2001/29/EC, a distinction should be made (on a case-by-case basis) between whether the manager of that hyperlink:

- acted with a profit-making purpose and without knowing or reasonably knowing the illegality of the publication of the intellectual work on the site to which it refers; or
- acted for profit, so that the knowledge of the illegality must be presumed.

Further, in another decision (1701/2016) dealing with the digitalisation and further exploitation of old movies that had been produced with analogue technology, the Athens Court of Appeal confirmed that, while the technical digitisation process did not fall within the scope of 'reproduction', the following actions did:

- capturing the digitalised contribution on an electronic storage medium;
- copying the digitalised contribution to the hard disk of a PC; and
- uploading the digitalised contribution to a website after it has been written in the central server memory.

Should the above actions occur without the permission of the contribution's authors or performers, this would constitute rights infringement.

As per Decision 13478/2014 of the Athens First-Instance Court, the action for interim injunction filed by a number of collective bodies – according to which it was sought that internet service providers be obliged to take measures such as blocking access to websites offering unlawful torrents or preventing downloads – was dismissed. The court ruled that the internet service provider's adoption of said measures for blocking subscribers and internet users from websites in order to combat the illegal exploitation of copyright-protected works was incompatible with:

- the constitutional principle of proportionality;
- the freedom of information; and
- the right to participate in an information society.

The measures did not meet the criteria of necessity and suitability, not even for the partial achievement of the desired purpose. The court reasoned that, among other things, the requested blocking measure (ie, an automatic filtering mechanism) would block traffic not only to illegal websites, but also to websites offering lawfully published works.

Technological developments

Have there been any notable technological advances or developments to assist copyright owners in protecting and enforcing their rights?

There have been no notable technological advances or developments to assist copyright owners in protecting and enforcing their rights besides established technological protection measures (TPMs).

TPMs are technologies, devices or components that, in the normal course of their operation, are designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the owner of any copyright or related right, including the sui generis right of the creator of a database. They specifically aim to protect works on the Internet and in any digital form.

Technological measures are considered 'effective' when the use of a protected work or other subject matter is controlled by the rights holder through the implementation of an access control or protection process such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the protection objective. Typical examples include:

- using a password or certification number;
- applying cryptographic and mark-up techniques;
- systems that limit the ability to create serial copies (eg, a serial management system); and
- hardware locks.

As with technological protection measures, digital rights management and electronic copyright management systems also enable right holders to control and manage their rights across digital forms of reproduction and dissemination.

Legal framework

Domestic law

What is the primary legislation governing copyright in your jurisdiction?

The primary domestic law governing copyright in Greece is Law 2121/1993 on Copyright, Related Rights and Cultural Matters (as amended and in force). Further copyright issues – especially those concerning the collective management of copyright – are addressed in recently enacted laws such as Law 4481/2017. In any case, Greek domestic law is heavily influenced by international copyright-related treaties and EU law.

International law

Is your jurisdiction a party to any international agreements relating to copyright?

Greece is a party to various copyright-related treaties, including:

- the Berne Convention for the Protection of Literary and Artistic Works;
- the Universal Copyright Convention;
- the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- the World Intellectual Property Organisation Copyright Treaty.

Online and digital regulation

Are there any legal provisions specifically covering digital and online content?

Articles 33 to 41 and Article 44(2) of Law 4481/2017 apply to collective management organisations established in Greece. They address the management of copyright in musical works intended for multi-territorial online use, both in terms of simultaneous transmission (simulcasting) and webcasting. These provisions do not apply to holders of related rights or to musical works in score form.

Since 2002, Law 2121/1993 – which incorporated EU Directive 2001/29/EC – has aimed to regulate the so-called

'digital rights' of rights holders. Such rights cover reproduction, communication to the public and distribution, and are fundamental to protecting copyright on the Internet. Their significance lies especially in the level of control that can be exercised by rights holders to manage their work on the Internet during all stages of the internet transmission process (ie, between the sender, recipient and any intermediaries).

Government authorities

Are any government authorities charged with regulating and enforcing copyright law?

Customs, police and port authorities, as well as other special control units, are charged with enforcing copyright law and imposing administrative fines. Further, customs authorities may seize goods which are suspected of rights infringement at the request of the rights holder.

With regard to regulation, the Hellenic Copyright Organisation (OPI) is a non-governmental authority that, nonetheless, is supervised by the Ministry of Culture and Sports. The OPI's main purpose is to:

- protect authors' rights and related rights holders;
- monitor the implementation of Law 2121/1993 and international treaties;
- supervise collecting societies; and
- undertake preparatory legal work on matters pertaining to copyright and related rights.

The OPI is also responsible for representing Greece before competent international organisations and EU bodies.

Protection

Copyrightable works

What works are eligible for copyright protection in your jurisdiction?

According to Article 2 of Law 2121/1993, which governs copyright, a work that is eligible for copyright protection is any original intellectual, literary, artistic or scientific creation expressed in any form. The work must therefore:

- have resulted from an individual's intellectual activity;
- be perceptible (thereby excluding ideas, concepts, principles or methods); and
- be original (ie, unique).

A work is considered 'unique' when it presents individual singularity or features a given minimal degree of creativity in a way that is distinguished from prior art. These requirements are examined and determined on an ad hoc basis.

A work is granted protection under Law 2121/1993 regardless of its aesthetic value, purpose or its protection by virtue of other Greek laws.

Law 2121/1993 sets out an indicative and non-exhaustive list of copyright protectable works that includes:

- written or oral texts;
- musical compositions with or without words;
- theatrical works, choreographies and pantomimes;
- audiovisual works;
- fine art;
- architecture;
- photographs;
- applied art;
- illustrations;
- maps and three-dimensional works relating to geography, topography, architecture or science; and
- translations, adaptations, arrangements or other altered works and collections.

Are there any special provisions for the protection of non-artistic works (eg, software and databases)?

Under Law 2121/1993, copyright can subsist in databases by reason of the selection or arrangement of their contents, without any prejudice to the rights relating to the content itself, as well as in computer programs and their

preparatory design material.

With regard to databases, despite any subsisting copyright, Greek law recognises the sui generis rights of database makers. For example, where it is proved that there has been a qualitatively or quantitatively substantial investment in obtaining, verifying or presenting its contents, the database maker has the right to prevent the extraction or reuse of the entire or a substantial part – evaluated qualitatively or quantitatively – of the database's contents. The database maker is the individual or legal entity that takes the initiative and bears the risk of investment.

Are any works explicitly excluded from copyright protection?

According to Law 2121/1993, official texts (ie, those which reflect state authority), traditional cultural expressions, news information and simple facts or data are not protected.

Related IP rights

Can copyrightable works be protected by other IP rights (eg, trademarks and designs)?

Copyrightable works may be protected by other IP rights provided that the protection requirements are met and subject to the applicable laws. For example, works of applied art may enjoy protection both as copyrightable works and as designs or utility patents; the same applies to logos, which can be protected simultaneously under copyright law and the Law on Unfair Competition.

Establishment of rights, registration and deposit

Establishment of rights

How is copyright established in your jurisdiction? Is registration, deposit or any other formality required?

No system for copyright registration currently exists. According to Article 2 of Law 2121/1993, which governs copyright, rights are vested in the creator of a work without having to resort to any formality. Ultimately, the work is protected from the moment of its creation and continues to be so even if it is unfinished.

Registration and deposit – procedure and effects

What is the procedure for copyright registration and deposit (whether mandatory or voluntary)?

No mandatory procedure for copyright registration exists. In practice, authors may seek to register their material or work (for example) by filing with a notary public. This serves only evidentiary purposes (ie, to secure proof of ownership and priority) and is unrelated to the existence of copyright per se.

Likewise, the registration procedures dictated by specific legislative acts are not related to copyright ownership, but are designed to preserve cultural heritage (eg, where copies of works are given to the National Library of Greece, the Library of the Hellenic Parliament and public libraries).

According to Article 69(1) of Law 2121/1993 (as amended by Law 4481/2017), the Hellenic Copyright Organisation (OPI) may, among other things, provide time stamps (ie, certified dates) relating to works or other copyrightable objects or related rights. Time stamping is not a prerequisite for protecting a work.

If voluntary, what are the benefits of registration/deposit?

The voluntary procedures above serve only evidentiary purposes for determining and securing proof of ownership and priority, and are unrelated to the existence of copyright per se.

Ownership

Eligibility

Who may own copyright in a work?

The natural person that created the work may own copyright in a work. In principle, legal entities can become owners of copyright only derivatively. In particular – and until proven otherwise – the person who lawfully makes works available to the public, even anonymously or under a pseudonym, is presumed by third parties to be the initial

copyright owner.

Joint and collective ownership

What rules and restrictions govern the joint or collective ownership of a copyright work?

In regard to collective works (eg, audiovisual works), the initial copyright owner is the individual undertaking the coordination and intellectual guidance of the single contributions. For example, this role is undertaken in films by the director, who owns the film's copyright. The other audiovisual contributors (eg, screenwriters, scriptwriters, composers, directors of photography, stage and costume designers, sound engineers and editors) are considered the authors of their own contributions.

Where a work results from the direct collaboration of two or more authors and therefore their contributions are integrated into the work in a way that they cannot be separately exploited, joint ownership applies. In this case, all co-authors of the work are the initial copyright owners and for any issues and dealings pertaining to the jointly owned work, the unanimous consent of all co-authors is in principle required.

Employee and commissioned work

What rules and restrictions govern the ownership of copyright in a work created in the course of employment (including works by employees and commissioned works by independent contractors)?

Where a work is created by an employee in the execution of an employment contract, the copyright vests in the employee who is considered to be the author of the work. However, unless provided otherwise by contract, the economic rights required for the fulfilment of the purpose of the contract are transferred ipso jure (ie, by the operation of law) to the employer. Where works are created by employees in the performance of their duties in the public sector or for a public law legal entity, all economic rights are transferred ipso jure to the employer, unless otherwise provided by contract. The same applies to computer programs.

In the case of commissioning, copyright ownership is reserved for the individual who created the work and any transfer of economic rights requires the prior written consent of the author – no transfer ipso jure is dictated in this case.

Exercise of rights

Owners' rights

What rights are afforded to copyright owners (including rights to use and limit the use of the copyrighted work)?

The copyright confers absolute rights on its owner. In particular, the rights holder is entitled to:

- authorise or forbid the exploitation of its work by any third party;
- define the extent of any exploitation; and
- prevent others from carrying out all forms of material exploitation such as:
 - o reproducing and creating derivative works (eg, adaptation, modification or translation);
 - o distributing, leasing or public lending; and
 - o broadcasting, making available to the public, public performance or recitation.

Besides the aforementioned exploitation rights, copyright conveys moral rights to its owner. Moral rights entitle the rights holder, among other things, to:

- decide on the time, place and manner in which the work shall be made accessible to the public (ie, its publication);
- demand that such disclosure should be effected in their own name, or that the work be presented under a pseudonym or anonymously;
- prohibit any distortion, mutilation or other modification of the work and any offence against their person;
- demand access to the work; and
- in the case of a literary or scientific work, revoke an exploitation or transfer contract, if such action is deemed

necessary for the protection of the rights holder's personality because of changes in its beliefs or circumstances.

Said moral rights 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 remains unaffected (otherwise the contract may be rendered void).

Are there any limits or restrictions on the rights holder's exercise of its rights, including any fair use allowances and parody exceptions?

Law 2121/1993 provides an exhaustive list of limitations and exceptions to economic rights, which should apply under the conditions stipulated therein. Said limitations refer to, among other things:

- quotations of short extracts of a lawfully published work by an author for the purpose of providing support for a case advanced by the person making the quotation or a critique of the author's position;
- reproductions for teaching purposes;
- reproductions by libraries and archives;
- reproductions for judicial or administrative purposes;
- reproductions for the benefit of people with disabilities; and
- reproduction for personal use under the limitations set out in Greek law.

Further, according to the principle of exhaustion, an author's right to seek to restrict the distribution of a work on copyright grounds is exhausted as of the moment of first circulation in the market by or with the copyright owner's consent in one of the EU member states or in a state that is a party to the Agreement on the European Economic Area. From that day forward, the rights holder cannot oppose the distribution of the work in any EU country.

Ancillary rights

What ancillary or neighbouring rights arise in relation to copyright (if any)? Are there any rules or restrictions on their exercise?

Greek copyright law sets out ancillary rights relating to copyright and concern the related rights of:

- performers;
- phonogram producers;
- audiovisual producers;
- broadcasting organisations; and
- publishers.

Previously unpublished works are also protected by a specific related right.

Related rights aim to secure the legal interests of certain persons and legal entities that contribute to making works available to the public or that produce subject matter which, while not qualifying as work under Greek copyright law, contains sufficient creativity or technical and organisational skill to justify recognition of a copyright-like property right.

Related rights owners are entitled to authorise or prohibit certain acts set out in Law 2121/1993 – these are similar in nature to the rights conferred to copyright holders. Further restrictions may apply as the case may be.

Duration

When does copyright protection begin and what is the duration of protection?

Copyright protection depends on the type of work. In principle, protection lasts for the whole of the author's life plus 70 years after their death (calculated from 1 January of the year after death). After this period, the state – represented by the minister of culture – may exercise the rights concerning the acknowledgment of the author's right of paternity and those relating to the protection of the integrity of the work deriving from the moral rights.

With regard to joint works, protection lasts throughout the life of the last surviving co-author plus 70 years after their death (calculated from 1 January of the year after the death of the last surviving co-author).

With regard to audiovisual works, protection lasts for 70 years after the death of the last of the following persons to survive:

- the principal director;
- the screenwriter;
- the scriptwriter; and
- the composer of music specifically created for use in the audiovisual work.

For given types of protectable works (eg, pseudonymous and anonymous works), the commencement of the 70-year term is otherwise stipulated by law.

Transfer, assignment and licensing

Transfer and assignment

What rules, restrictions and procedures govern the transfer and assignment of copyright? Are any formalities required to secure the legal effect of the transfer or assignment?

Economic (exploitation) rights can be transferred and assigned inter vivos (ie, between living people) as well as by inheritance. Moral rights cannot be transferred and assigned during an author's lifetime – they can be transferred and assigned to the heirs only after the author's death.

Economic rights transfers may be limited by, for example:

- extent;
- content;
- term; and
- territory.

In any case, transfer and assignment agreement must be recorded in writing; otherwise, the author may invoke its nullity towards third parties. Further, a transfer and assignment agreement may by no means refer to all of the author's future works and must never be deemed to refer also to forms of exploitation that were unknown at the date of the agreement.

Licensing

What rules, restrictions and procedures govern copyright licensing?

The aforementioned rules regarding transfer and assignment also apply to copyright licensing.

Are there any special provisions governing sub-licensing?

According to Article 13(6) of Law 2121/1993, sub-licensing requires the prior written consent of the author and is subject to the same rules governing the transfer agreement.

What collective licensing bodies operate in your jurisdiction and how are their activities regulated?

The management and protection of author's rights and related rights can be carried out individually by each beneficiary or collectively. In Greece, there are three types of collective licensing bodies:

- collecting societies;
- collective protection societies; and
- independent management entities.

Collecting societies are empowered with managing copyright and related rights and the collection of royalties, including those that, by law, must be collectively managed (eg, private copying levies).

Independent management entities may also manage copyright and related rights, but not rights that are subject to mandatory collective management (without prejudice to the exceptions stipulated in Law 4481/2017).

The main difference between collecting societies and independent management entities in organisational terms is that the former are organised on a non-profit basis and belong to the rights holders (or are controlled by them), while the latter are profit-making entities and are not controlled in any way by their members.

Collective protection societies may undertake protection acts only.

Any collecting society, collective protection society or independent management entity established in the territory of Greece intending to assume the collective management – or protect the economic rights of rights holders – must be granted a licence by the Ministry of Culture and Sports.

Collecting societies operating under the authority of the Ministry of Culture and Sports may establish a unified collective management organisation, to which they may assign the exclusive power to:

- negotiate grant licences;
- agree fees and claim payments;
- proceed to any judicial or extrajudicial action; and
- collect royalties from users and distribute them to the respective collecting societies.

Assignments to collective licencing bodies are, in principle, voluntary. However, Greek law imposes obligatory collective management or an obligatory exercise of rights in some cases – for example, collections of equitable remuneration deriving from private reproduction (private copying levies).

There are currently 17 collecting societies and two collective protection societies in Greece, all of which are licensed by the Ministry of Culture and Sports and supervised by the Hellenic Copyright Organisation.

The collecting societies are:

- AEPISA – representing composers and lyricists;
- ATHINA – representing directors and scriptwriters;
- AUTODIAXEIRISI – representing composers and lyricists;
- THESPIS – representing theatrical writers and translators of theatrical plays;
- ISOCRATIS – representing photography directors, stage designers, costume designers, sound engineers and film editors;
- OSDEETE – representing authors of fine arts;
- OSDEL – representing writers and publishers;
- PHOEBUS – representing photographers;
- APOLLON – representing musicians;
- DIAS – representing producers of audiovisual works;
- DIONYSOS – representing actors;
- ERATO – representing singers and performers;
- HERMIAS – representing film producers;
- GRAMMO – representing phonogram producers;
- IRIDANOS – representing producers of audiovisual works;
- TILEOPTIKA DIKAIOMATA – representing the related rights of broadcasting organisations and producers of audiovisual works; and
- GEA – representing sound engineers.

The collective protection societies are:

- the Company for the Protection of Audiovisual Works; and
- the Advertising Companies Rights Protection Society.

Enforcement

Jurisdiction

Which courts are empowered to hear copyright disputes?

Under Greek law, copyright disputes are heard before the civil courts. In the civil courts of Athens, of Thessaloniki and of Piraeus there are divisions that are specialised in trying copyright issues. The value and nature of the claims will determine whether the magistrate, single member or multi-member civil court are the most competent to try the case in the first instance.

Infringement

What acts constitute copyright infringement in your jurisdiction (including with

regard to online and digital content)?

Copyright infringement is not expressly defined in Law 4481/2017. Any act involving subject matter which is identical to that of a copyright or related right – to the extent that they are protected by law and insofar as the act is not undertaken by the beneficiary or following their consent and does not fall within the limitations or restrictions stipulated in the law – constitutes copyright infringement.

The exploitation of economic rights resulting from the work, including the right to reproduction, adaptation and communication to the public, without the author's consent (eg, republishing an article) or in violation of moral rights (eg, improper attribution in a photograph) are examples of copyright infringement. This applies both to offline and online digital works.

Is contributory infringement recognised in your jurisdiction (including liability for internet services providers and other online/digital actors)?

Greek copyright law recognises contributory (ie, secondary) infringement. In particular, under Law 4481/2017, the circumvention of technological measures that are applied to ensure that preparatory and contributory actions for copyright infringement are prevented constitutes secondary infringement and could induce perpetrator's liability (both civil and criminal), while administrative penalties may be further imposed.

In this context, the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological measures are also deemed to be contributory infringements.

Greek copyright law sets out the liability of intermediaries (eg, internet service providers) whose services are used by a third party to infringe a copyright, related right or the right of a database maker. Infringement may consist of unlicensed work presented on a website or be effected through illegal file sharing (eg, using a peer-to-peer network).

In any event, internet service providers are given a limited safe harbour from monetary damages under Article 14 of the EU E-Commerce Directive (2000/31/EC) where their services are used to host infringing content.

Other acts which facilitate copyright infringement do not qualify as infringement per se, but fall under general civil law provisions on tort law.

Actions

What actions can be taken against copyright infringement (eg, civil, criminal or administrative), and what are the key features and requirements of each?

Civil actions can be taken against copyright infringement and depending on the circumstances, infringers may face additional criminal penalties and administrative fines.

Rights holders in civil actions must be able to prove their rights and adduce reasonably available and sufficient evidence to substantiate any allegations of infringement or imminent infringement.

Criminal penalties are stipulated in Article 66 of Law 4481/2017. Article 66 details all types of offence and lists, among other things, penalties for:

- violating copyright, related rights and database rights;
- circumventing technical measures; and
- the unauthorised use of software programs.

The prosecution of these criminal offences takes place ex officio – no criminal complaint is required to be filed. In any case, the owner of the infringed rights is entitled to declare the civil standing through the criminal proceedings. Criminal liability presupposes wilful intent – in other words, the perpetrator's awareness of the elements of and their will to commit the offence. Criminal liability exists even where the perpetrator objectively foresees the possibility of the act causing the infringement and persists regardless.

Administrative fines may be imposed in the event of the unlawful reproduction, sale or distribution to the public or possession with the intent of distribution of a computer program or in the event that street vendors or standing persons are caught distributing to the public – by sale or other means – or possessing with the intention of distributing sound recordings on which a work protected by copyright law has been recorded. The imposition of fines takes place ex officio.

Who can file a copyright infringement action?

Copyright infringement actions can be brought before the courts by the author or the author's universal successors,

as well as their special successors (ie, assignee or licensee). In the latter case, if the granted licence is non-exclusive, there must be proof that the enforcement rights have been assigned to the licensee. Further, the collective licensing body that is competent for managing the author's exploitation rights is also entitled to invoke and assert said claims.

What is the statute of limitations for filing infringement actions?

The timeframe for bringing an action before the courts greatly depends on the cause of the invoked claim. For example, compensation claims relating to IP rights or related rights infringement must be raised within five years following the point of knowledge of the unlawful act and in any case within 20 years from the act being committed. The same timeframe applies to cease and desist claim, as well as moral damages claims. However, claims based on unjustified enrichment are subject to 20-year limitation.

What is the usual timeframe for infringement actions?

In principle, litigant parties have 115 days from the date on which an infringement action is filed to submit briefs and means of evidence. This timeframe is extended by 30 days if the defendant or one of its counterparts resides abroad or has an unknown residence. Following this, the case file is closed. It then takes approximately 14 to 20 months for a decision to be issued, depending on factors such as the judge's workload, case complexity and amount of evidence adduced.

What are the typical costs incurred in infringement actions?

Infringement proceeding costs vary from case to case, often depending on the legal and factual circumstances and the value of the subject matter. Typical costs include those pertaining to evidence gathering and attorneys' fees.

How are attorneys' fees handled? Can they be claimed in infringement actions?

Attorneys' fees are borne by each litigant party with regard to its own legal representation. A minor part thereof (ie, statutory fees) is included in the judicial costs that the defeated party is in principle obliged to pay towards the winning party. Theoretically, the attorneys' fees could be claimed in their entirety in separate compensation actions, yet said action is unlikely to be admitted, since the court would probably consider only the legal fees prescribed in the law.

Injunctions

What rules and procedures govern the issuance of injunctions to prevent imminent or further infringement?

In the event of imminent or further infringement, interim injunctions are available, including precautionary seizure, inventory or photographing of items allegedly infringing IP rights or preliminary measures for preventing future infringement where imminent danger exists. There is no need to specify the works infringed or work under threat of infringement. Where infringement is committed in a commercially notable scale, the competent court may order the seizure of the assets of the alleged infringer and the freezing of their bank accounts. The court may order the aforementioned measures under the condition that the applicant pays a guarantee as determined by the injunction.

Remedies

What remedies are available to owners of infringed copyrights?

Rights holders may claim:

- the recognition of authorship;
- the cessation of the infringement; and
- the abstention from infringement in future.

The cessation of the infringement entails:

- recalling the infringing goods from commercial channels and, where appropriate, recalling the materials used in manufacturing these goods;
- permanently withdrawing the infringing goods from trade; or
- destroying the infringing goods.

Moreover, rights holders are entitled to claim compensation and moral damages. Instead of compensation and regardless of whether the infringement was committed by intent or negligence, the author or rights holder of the related right may demand either:

- the payment of the sum accrued by the infringing party from the unlicensed exploitation of a work or the object of a related right; or
- the profit gained by the infringing party from such an exploitation.

Customs enforcement

What customs enforcement measures are available to halt the import or export of pirated works?

EU Customs Enforcement Regulation (608/2013) applies and permits national customs authorities to seize goods that seem to infringe on IP rights upon the rights holder's request.

Defence

What defences are available to infringers?

Law 4481/2017 sets out exceptions relating to rights holders' exploitation powers, which can be invoked against an infringement claim. For example, there are cases where the use of a copyrighted work is permissible without the rights holder's consent and sometimes even without paying royalties, including:

- reproducing work for private use;
- quoting extracts of lawfully published works;
- reproducing lawfully published work in educational textbooks;
- reproducing lawfully published literary works in anthologies after the author's death;
- reproducing lawfully published articles in newspapers or journals;
- reproducing lawfully published 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;
- reproductions for libraries and archives;
- reproductions for judicial, administrative or 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;
- exhibitions and reproductions by museums of works of fine art; and
- reproductions for the benefit of blind, deaf or mute persons.

In any case, Law 4481/2017 explicitly states that limitations can be applied only in certain special cases, provided that they do not conflict with the normal exploitation of the work or other protected subject matter or unreasonably prejudice the legitimate interests of the rights holder.

In addition to the above, exemptions from the right of reproduction apply to temporary acts of reproduction that are transient or incidental and constitute an integral and essential part of a technological process with the sole purpose of enabling:

- a transmission in a network between third parties by an intermediary; or
- a lawful use of a work or other protected subject matter which has no independent economic significance.

Appeal

What is the appeal procedure for infringement decisions?

Each litigant party is granted a right of appeal. The appeal can be brought on any grounds relating to the legal basis, for example, wrongly interpreted legal provisions as well as to case merits, or where the adduced means of evidence are erroneously evaluated.

According to the Code of Civil Procedure, appellants residing in Greece have 30 days to file an appeal; appellants residing abroad or whose residence is unknown have 60 days. In both cases, the deadline commences from the date on which the decision terminating the trial in the first instance is served.

Online/digital considerations

Protection and enforcement measures

What special measures and safeguards should rights holders consider in protecting their online/digital content?

Rights holders should consider the new dispute settlement procedure introduced by Law 4481/2017, which governs copyright, when preparing cases of online infringement relating to copyrighted works or related rights.

The new procedure aims to restrict – as much as possible – online infringement and entitles owners of allegedly infringed IP rights or related rights to file an application, either in person or electronically, to terminate the infringement. Applications are addressed to a committee specifically established by the Ministry of Culture and Sports for this purpose.

Rights holders should document any allegedly infringed rights. With regard to admissibility, rights holders must have previously made use of the corresponding procedure which the provider determined and which was concluded within a reasonable timeframe, but without a result. In addition, rights holders must pay an administrative fee when submitting the case examination application.

In principle, the committee must issue its decision within 40 working days of the application being filed. If copyright or related right infringement is suspected, the committee will order the removal of the content or have its access blocked; it may also threaten penalties in case of non-compliance. This procedure has the advantage of being instant and effective with regard to protecting and enforcing rights. Importantly, the commencement of this procedure does not suspend or affect the right to bring the same dispute before the Greek courts. However, if a petition has been brought before the courts by the same applicant and with the same claim, the committee archives the case. Finally, the committee issues a decision that does not deprive the parties concerned of their right to seek the protection of their legitimate interests before the courts. The effectiveness of above procedure remains to be seen in the future.