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# Copyright

Greece

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# 2021

# GREECE

## Law and Practice

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## 1. General Information

### 1.1 Governing Copyright Statute

The governing copyright statute in Greece is law No 2121/1993, as was further amended by various laws (“Greek Copyright Law”). Furthermore, law No 4481/2017 harmonised national legislation with Directive 2014/26/EU and regulates collective management of copyright and related rights and multi-territorial licensing in musical works for online use in the internal market. The English version of both of these legislative texts can be accessed online via the official site of the Hellenic Copyright Organization (HCO). There are no other principal sources of law regulating copyright in Greece. Greek courts do not possess law-making capacity and their role is primarily to interpret legislation and they are not bound by legal precedents.

### 1.2 Berne Convention

Greece is a party to the Berne Convention (Paris text 1971), which was ratified by law No 100/1975, as well as of many other significant international conventions/treaties referring to the protection of both copyright and neighbouring rights, which includes the following:

- the Universal Copyright Convention, ratified by law No 4254/1962;
- the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, ratified by law No 2054/1992;
- the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, ratified by law No 2148/1993;
- the Convention Relating to the Distribution of Program - Carrying Signals Transmitted by Satellite, ratified by law No 1944/1991;
- the TRIPS Treaty, ratified by law No 2290/1995;
- the WIPO Copyright Treaty, ratified by law No 3184/2003;
- the WIPO Performances and Phonograms Treaty, ratified by law No 3183/2003; and
- the Marrakesh Treaty to facilitate access to published works for persons who are blind, visually impaired, or otherwise print disabled.

### 1.3 Foreign Copyright Holders

Foreign copyright holders are granted the same protection as the domestic copyright holders in respect of the subject matter, duration and boundaries of protection and the means of redress afforded to the author to protect their rights. Since Greece is a party to the Berne Convention, the principal of “national treatment” applies.

Copyright protection in Greece is vested automatically on copyright holders, without any need for formality, due to the mere

creation of their works. As a result, there is no need for foreign copyright holders to follow any special steps in order to secure protection of their rights in Greece.

## 2. Copyrighted Works

### 2.1 Copyright Protection: Essential Elements

A work can be protected under Greek Copyright Law if it meets the following general criteria which apply to all types of works. It must:

- be a creation of the intellect, ie, the result of a human creative action which somehow expresses the feelings or the ideas of its author;
- be a creation of the literary, artistic or scientific domain;
- be expressed in any form perceptible to the senses; and
- be original.

#### Originality

The notion of “originality” is not defined in law, with the exception of originality in relation to computer programs and their preparatory design material. In general terms, it can be stated that two levels of originality are applied by the Greek Courts: the one that applies to computer programs, databases and photographs, and the other one that applies to all other categories of works. More specifically, Greek Courts determine whether a work, included in the second (general) category of works, may be considered original or not by resorting to the theory of “statistical uniqueness” and/or to the theory of “creative height”.

According to the first of these theories, a work is considered to be original when under similar circumstances and with the same goals, no other author would be in a position to create a similar work. According to the latter theory, a work must present an individual specificity or a minimum threshold of creative height so as to stand out and differentiated from the daily (common) works or from other similarly known works.

#### Originality in Computer Programs/Databases/Photographs

As far as the originality criterion with respect to computer programs, databases and photographs is concerned, according to established case law and prevailing legal theory which takes into account the interpretation of the relevant provisions of the respective Directives (Article 1, paragraph 3 of 2009/24/EC; Article 3, paragraph 1 of 96/9/EC; and Article 6 of 93/98/EC), a lower degree of originality is required, due to the fact that the creation of these works requires the use of technology. More specifically, it suffices for these works to not be a duplicate of a previous work of another author and to be characterised by a minimum standard of individuality.

## 2.2 Copyright Protection: Special Notice and Registration of Works

Greek Copyright Law does not provide for any formalities in relation to the protection of a work. An author enjoys protection from the moment of, and due to the mere fact of, the creation of their work. However, if an author wishes to obtain a proof of existence of their work at a given date and, therefore, enhance their position in a relevant potential future dispute, they can either file the relevant work before a notary public or declare it to the HCO via its timestamping online service. These procedures are not provided by law and in no way constitute a pre-requisite for protection.

## 2.3 Categories of Copyrightable Works

Any work which is a literary, artistic or scientific creation and meets the general criteria for protection can be protected under Greek Copyright Law. No tangible fixation of the work is required. The law further provides for an indicative list of certain types of works, without specifically categorising them as literary, artistic or scientific, which includes the following:

- written or oral texts;
- musical compositions with or without words;
- theatrical works accompanied or unaccompanied by music;
- choreographies;
- pantomimes;
- audio-visual works;
- works of fine art, including drawings, works of painting and sculpture, engravings and lithographs;
- works of architecture;
- photographs;
- works of applied art;
- illustrations;
- maps; and
- three-dimensional works relative to geography, topography, architecture or science.

There is also a specific reference to computer programs and their preparatory design material, to databases, translations, adaptations, arrangements and other alterations of works or of expressions of folklore and to collections of works or collections of expressions of folklore or of simple facts and data, such as encyclopaedias and anthologies.

## 2.4 Copyright Protection: Software

Greek Copyright Law specifically refers to the protection of software, providing that computer programs and their preparatory design material are deemed as literary works and may be protected, if they are original, in the sense that they are their author's personal intellectual creation. The protection applies to the expression in any form of a computer program and therefore it also applies to the source code and the machine code, while

the ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are not protected.

The notion of originality is specifically defined in Greek Copyright Law only in relation to computer programs and the relevant reference stems out from the provision of Article 1, paragraph 3 of Directive 2009/24/EC, which states that a computer program is original in the sense that it is the author's own intellectual creation. This wording indicates that the level of required originality for the protection of a computer program is lower than that required for the protection of any other work (see **2.1 Copyright Protection: Essential Elements**). The protection provided under copyright law does not prohibit the cumulative protection of software based on other fields of law, such as patent law or unfair competition or trade secrets law.

## 2.5 Copyright Protection: Databases

Databases, which are defined as collections of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means, are protected under Greek Copyright Law. In order for a database to be protected as such, the selection or the arrangement of its contents must constitute the author's intellectual creation. Despite the fact that the term "originality" is not explicitly mentioned in law in relation to databases, in contrast with the computer programs, the same criterion of originality applies for both types of works (see **2.1 Copyright Protection: Essential Elements**), as this is indicated by the use of the same wording in both of these provisions ("author's intellectual creation").

Copyright protection does not extend to the contents of a database. If the contents of a database consists of works protected under copyright law, the protection of the database is without prejudice to any rights subsisting in these works themselves. The law further grants the maker of a database with a *sui generis* right if there has been, qualitatively and/or quantitatively, a substantial investment in either the obtaining, verification or presentation of the contents of the database. The holder of this right, which is of economic nature and quite limited in relation to the economic rights granted to copyright holders, can be either a natural person or a legal entity and, more specifically, the one who takes the initiative and bears the risk of investment. This *sui generis* right is vested to the maker of the database regardless of whether the respective database or the content thereof are protected by copyright or other provisions (such as unfair competition law provisions).

## 2.6 Copyright Protection: Industrial Design

The law does not prohibit a subject matter which benefits from protection under industrial law from being cumulatively pro-

tected under copyright law, provided that it meets the general criteria for copyright protection. However, it should be mentioned that is more difficult for these types of works to meet the originality criterion due to the fact that their utilitarian purpose substantially limits the possibility of artistic expression.

## 2.7 Copyright Protection: Distinct Categories

There is no specific reference in Greek Copyright Law for fictional characters, TV formats and related media, sport events, advertising copy and product labels, museum exhibitions, websites, recipes and perfumes. Only maps are specifically mentioned in the indicative list included in the Greek Copyright Law and can be protected if they meet the general criteria of protection. However, according to established case law and prevailing legal theory, the following general rules apply for the above-mentioned categories of works:

- fictional characters and, more specifically, their illustration and their three-dimensional reproduction can be protected under copyright law, provided that they meet the originality criterion;
- TV formats and related media cannot be protected under copyright law, since they merely consist of ideas or of system of methods, styles and rules;
- sport events are not a work of intellect and, therefore, cannot be protected under copyright law;
- text included in advertising copy can be protected under copyright law if it meets the originality criterion;
- text or an image included in a product label can be protected under copyright law if it meets the originality criterion;
- museum exhibitions can be protected under copyright law if they form a collection of works or of expressions of folklore, provided that the selection or the arrangement of their content is original;
- websites can only be protected as databases if they meet the respective criteria provided by law, while their individual components (illustration elements, photographs, texts, etc) can be protected separately if they meet the originality criterion;
- recipes can only be protected under copyright law as texts if they meet the originality criterion;
- perfumes cannot be protected under copyright law since they do not qualify as artistic, literary or scientific works; and
- maps and, more specifically, their illustration can be protected under copyright law if they meet the originality criterion and, where a map includes data organised in a specific original manner, they can be protected as databases.

## 3. Authorship and Copyright Ownership

### 3.1 Authorship

Only natural persons, not legal entities, can be considered authors under the Greek Copyright Law and, as a result, as initial right holders of both the economic and moral rights to the work. Therefore, the natural person who created a work is the author of that work. The law also provides for the following rebuttable presumptions on the authorship of a work:

- a general presumption applicable to any types of works, based on which the person whose name appears on a copy of a work in the manner usually employed to indicate authorship, shall be presumed to be the author of that work;
- a presumption in relation to audio-visual works, based on which the principal director of an audio-visual work shall be considered as its author; and
- a presumption in relation to anonymous or pseudonymous works, based on which any person who lawfully makes available to the public anonymous or pseudonymous works being deemed as the initial holder of the economic and moral right towards third parties.

### 3.2 Joint Authorship

The term “work of joint authorship” designates any work which is the result of the direct collaboration of two or more authors, meaning a single work where the contribution of each author cannot be distinguished or considered as independent. The initial right holders in respect of all the economic and moral rights in a joint work are the co-authors of that work.

Unless otherwise agreed, the rights are shared equally between the co-authors. Each author has the right to manage its percentage while it cannot assign, transfer or licence the whole interest of all the co-authors to the work, unless this is otherwise determined in an agreement executed between the co-authors. However, it is argued that in the case a co-author unjustifiably denies a certain exploitation of the work, the respective denial may be considered as abusive.

### 3.3 Copyright Protection: Anonymous or Pseudonymous Works

Both anonymous and pseudonymous works are protected under Greek Copyright Law. Since the true author of these works cannot be identified, the law provides for a rebuttable presumption, based on which any person who lawfully makes available to the public anonymous or pseudonymous works is deemed as the initial holder of the economic and moral right towards third parties. However, when the true author of the work reveals their identity, they acquire the above-mentioned rights in the

condition that they are as a result of the actions of the fictitious right holder.

In relation to orphan works, an exception has been introduced in Greek Copyright Law in alliance with the provisions of the 2012/28/EU Directive. This exception allows certain beneficiaries (publicly accessible libraries, educational establishments or museums, archives or film or audio heritage institutions and public-service broadcasting organisations) to communicate to the public and reproduce these works for indexing, making available to the public, cataloguing, preservation or restoration purposes. This exception applies only to certain types of orphan works specifically mentioned in law, which are in the collections of the above-mentioned beneficiaries.

The use of these works is permitted only for the achievement of the public-interest missions of these beneficiaries (preservation, restoration and the provision of cultural and educational access to works). If the right holder of an orphan work comes forward, then they have the right to ask for the termination of the use of their work by the relevant beneficiary and for compensation for the work's use.

### 3.4 Collective Works

The term "collective work" designates any work created through the independent contribution of several authors acting under the intellectual direction and co-ordination of one natural person. That natural person is the initial right holder of all the economic and moral rights to the collective work and therefore is the only person to decide in relation to this work's exploitation, while the author of each contribution is the initial right holder of all the economic and moral rights to their own contribution, provided that that contribution is capable of separate exploitation.

### 3.5 Corporate Authorship

Legal entities cannot be considered as authors of works under Greek Copyright Law. The natural person who created the work is always considered the author of that work, even in cases of works of hire or works created by a consultant based on a services agreement. More specifically, where a work is created by an employee in the execution of an employment agreement, the initial holder of all the economic and moral rights to the work is the employee - the author of the work.

The parties have the right to determine in writing in the employment agreement whether any of the economic rights may be transferred to the employer and to what extent. In the absence of a relevant clause, the law provides for an interpretation rule, based on which only the economic rights necessary for the fulfilment of the purpose of the agreement are exclusively transferred to the employer.

### Public Sector Works

The works created by employees working in the public sector or for a legal entity of public law in the execution of their duties are treated slightly differently; all the economic rights to these works are automatically transferred to the employer by virtue of law. However, even in this case, the employee-natural person is considered to be the author of the work and the parties have the right to agree in writing otherwise as to the ownership of the economic rights.

### Employment Contracts Related to Computer Programs

The exact same rule applies for the economic rights related to a computer program created by an employee in the execution of an employment agreement or following instructions given by their employer. All the economic rights related to this program are transferred ipso jure to the employer, however, the parties have the right to agree in writing otherwise.

### Works Created Based on a Services Agreement

Finally, in case of works created by consultants based on a services agreement, the parties are free to agree in writing which rights and to what extent may be transferred to the assignor. In the absence of a relevant clause in the respective agreement, the theory of the finality applies, based on which the transfer of the rights is limited to the scope of the agreement.

## 4. Scope of Copyright Protection

### 4.1 Economic Rights of the Copyright Owner

Greek Copyright Law provides for an indicative list of economic rights of the copyright owner, which includes the following:

- right of fixation;
- reproduction right;
- translation right;
- arrangement, adaptation or other alteration right;
- distribution right;
- rental or public lending right;
- public performance right;
- broadcasting and rebroadcasting right;
- communication to the public right and right of making the works available to the public in such a way that members of the public may access these works from a place and at a time individually chosen by them; and
- importation right (of copies of works produced abroad without the author's consent or importation of copies from a country outside the EU, when the right over such import in Greece had been retained by the author through contract).

The general rule for the term of protection of all the economic rights in relation to any work is that the protection lasts for the

whole duration of author's life and for 70 years after their death, calculated from January 1st of the year following this event. The law also includes specific provisions in relation to the term of protection of the following types of works.

## **Collaborative Works**

With respect to collaborative works, copyright protection lasts as long as the life of the last surviving author and 70 years following their death, calculated from January 1st of the year after their death.

There is a specific reference in relation to the term of protection of two specific categories of collaborative works; of musical compositions with lyrics and of audio-visual works. As far as musical composition with lyrics are concerned, the general rule for the term of protection of collaborative works applies, provided that both contributions, by the composer and the lyricist, have been created specifically for the particular musical composition with lyrics. Otherwise, the duration of protection refers independently to each part of the collaborative work.

In relation to audio-visual works, the law specifically refers to the persons who determine the duration of the protection and provides that protection expires 70 years after the death of the last of the following persons to survive: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music specifically created for use in the audio-visual work.

## **Anonymous or Pseudonymous**

With respect to anonymous or pseudonymous works, the term of copyright protection lasts for 70 years computed from January 1st of the year after that in which the work was lawfully made available to the public. However, if during the above period the author discloses their identity or when the pseudonym adopted by the author leaves no doubt as to their identity, the general term rule applies.

## **Works Published in Volumes/Installments, etc**

With respect to works which are published in volumes, parts, instalments, issues or episodes, the term of protection runs from the time when the work was lawfully made available to the public and for each such item separately.

## **The Termination of a Transfer or of a Licence Agreement**

Greek copyright law provides that in all cases involving transfer of economic rights or granting of an exclusive exploitation licence, the person who acquires these rights or the respective licence is obliged to ensure that within a reasonable period of time, the work becomes accessible to the public via an appropriate form of exploitation. Therefore, according to prevailing legal

theory, in such cases the relevant agreement may be terminated and the relevant rights may be recaptured by the initial holder.

## **4.2 Alienable Rights**

All the economic rights are alienable and may be transferred between living persons. The transfer is valid only if it takes place with a written agreement. The relevant agreement may refer to certain or to all economic rights related to a work and may further include clauses regulating the exact scope and duration of the transfer, the geographical application and the extent or the means of exploitation.

In the absence of such clauses, the law provides for certain interpretation rules (the duration is limited to five years, provided that fair trade practices do not indicate otherwise, the agreed legal acts apply only to the country in which the agreement was concluded and refer to the extent and the means that are necessary for the fulfilment of the purpose of the transfer). The person who acquires any of the economic rights based on a transfer agreement, must ensure that within a reasonable period of time, the work will become accessible to the public via an appropriate form of exploitation.

Finally, the economic rights may be subject of exclusive and non-exclusive exploitation contracts or licence agreements, to which all the above-mentioned rules apply. These contracts/licences may in no case refer to all the rights over the future works of the author or regulate forms of exploitation unknown on the date of the contract.

## **4.3 Transmissible Rights**

All the economic rights are transmissible upon death to the heirs of the author. Greek Copyright Law does not provide for specific provisions in relation to the inheritance of economic rights and therefore the general rules of inheritance law apply. This means that if the descendant author left a will, the economic rights are inherited by the heirs and may be exercised in the manner specifically defined in this will. In the absence of a will, the general provisions determining the heirs of any descendant shall apply.

## **4.4 Transfer of Rights**

The transfer of any economic right is valid only if it takes place with a written agreement. The law does not regulate specific types of agreements for the transfer of these rights, however, it provides for specific rules, mainly related to the authors fees (royalties) and to the extent of the transferred rights, that must be respected by the contracting parties in case of the following types of agreements:

- agreements for printed editions;
- audio-visual production agreements;

- theatrical performance agreements;
- radio-broadcasting agreements;
- agreements related to soundtracks of films; and
- agreements related to photographs.

Any clauses included in any of these agreements that are contrary to the provisions of law or which impose a fee (royalty) level lower than the one provided by law, shall be null and void. A transfer agreement must be signed by the adequate contracting parties, ie, by the author or the subsequent right holder and the person interested to acquire these rights.

In terms of legal capacity, the general terms of Greek Civil Law apply, based on which a person has the capacity to perform any legal acts upon reaching the age of 18. This means that despite the fact that even an underaged person may be the author of a work, since the act of creation of a work does not consist a legal act, this author cannot be a contracting party of a relevant transfer agreement nor exercise their rights. In such case, the underaged author must be represented by their legal representatives.

#### 4.5 Copyright Exhaustion Doctrine

Exhaustion doctrine is provided by Greek Copyright Law only in relation to the distribution right. The distribution right shall be exhausted within the EU only where the first sale or other transfer of ownership in the EU of the original or copies of a work is made by the right holder or with their consent.

A specific reference is also made in relation to the distribution right of computer programs, where the law states that the first sale in the EU of a copy of a program by the author, or with their consent, exhausts the distribution right within the EU of that copy, with the exception of the right to control further rental of the program or of a copy thereof. However, Greek Copyright Law specifically states that the exhaustion doctrine does not apply to the public lending or rental right or to the communication and making available right.

#### 4.6 Moral Rights of the Copyright Owner

Greek Copyright Law provides for an indicative list of moral rights, which includes the following:

- publication right;
- authorship right;
- prohibition of distortion, mutilation or other modification right;
- access right; and
- rescission right, in relation to a literary or scientific work.

The duration of protection of moral rights is the same with the one for economic rights, ie, it lasts for the whole life of the author and 70 years after their death, calculated from 1st January of the

year following this event. After the expiry of protection, the State, represented by the Minister of Culture, may exercise the authorship right and the prohibition of the distortion of a right.

Moral rights cannot be transferred or licensed between living persons. They always remain with the author. Moral rights can be transferred only upon death. In such a case, the heirs of the author have to exercise the rights in compliance with the author's wishes, provided that such wishes have been explicitly expressed.

## 5. Copyright Management Systems

### 5.1 Anti-circumvention Right

Greek Copyright Law includes a provision for the protection against circumvention of technological measures used by the authors to prevent the infringement of their rights, which fully complies with Article 11 of WIPO Copyright Treaty. More specifically, the law prohibits:

- any unauthorised circumvention of effective technological measures, provided that the person is knowingly performing or has reasonable grounds to know that an infringement is being pursued;
- the commercial or trade use, such as manufacture, import, distribution, sale, rental or relevant advertisement, possession for commercial purposes of products, devices and equipment which are produced, designed, promoted, marketed, etc, for the sole or primary purpose of circumvention; and
- the provision of relevant services which are performed with the sole or primary purpose of circumvention.

The infringers are facing criminal sanctions, while the right holders are entitled to proceed to any civil law actions provided by law in case of infringement of copyright, such as file a compensation or a cease and desist claim. The law further states that the right holders are obliged to provide to the beneficiaries of certain statutory exceptions the measures to ensure the benefit of the respective exceptions.

### 5.2 Legal Remedies for Copyright Management Information

Greek Copyright Law grants to right holders certain legal remedies against acts of infringement related to copyright management information and the relevant provision fully complies with Article 12 of the WIPO Copyright Treaty.

More specifically, the law prohibits the removal or alteration of any electronic rights management information, as the latter is defined in Article 12 of the WIPO Copyright Treaty, and the dis-



tribution, importation for distribution, broadcasting, communication or making available to the public of works from which electronic rights management information has been removed or altered without authority, provided that the person performing such acts knows or has reasonable grounds to know that they are inducing, enabling, facilitating or concealing an infringement of any copyright. The infringer faces criminal sanctions, while the law also provides for civil remedies and therefore the right holder may file a compensation and/or a cease and desist claim and resort to any other civil remedy provided by Greek Copyright Law in case of any copyright infringement.

## 6. Collectives

### 6.1 Collective Rights Management

The collective rights management system in Greece was reformed with law No 4481/2017, which harmonised national legislation with Directive 2014/26/EU and introduces two major types of collecting societies, which have the right to manage copyright or neighbouring rights:

- collective rights management organisations (CMOs), meaning organisations owned or controlled by right holders and/or are organised on a non-profit basis; and
- independent management entities (IMEs), which are organised on a for-profit basis and not owned or controlled by right holders.

Furthermore, the law provides for a third type of collecting society, the Collective Protection Organizations (CPOs), whose sole purpose is to protect (not manage) the rights of their members. There is no limitation as to the number of CMOs, CPOs or IMEs that can operate in a specific field. Currently, in Greece, there are 17 CMOs managing the rights of both authors and right holders of neighbouring rights, two CPOs, whilst no IME operates as yet. All types of collective societies are subject to administrative supervision and must obtain an operating licence from the Ministry of Culture and Sports.

### Economic Rights

All economic rights granted to the authors and to the right holders of neighbouring rights can be subject to collective management. A right holder may voluntarily delegate the management of any of its right to the respective collecting society.

However, law provides that certain categories of rights are subject to compulsory collective management, such as the right of authors and right holders of neighbouring rights to receive an equitable remuneration, in case of private use conducted via technical means, or the right of performers and producers of phonograms to receive equitable remuneration in case of radio

or TV broadcasting of communication to the public of a phonogram which was lawfully produced. In order for collecting societies to allow the use of the works from their repertoire, they claim a percentage fee from the users of these works, based on a tariff table drawn up and communicated by them to the public.

### 6.2 Collecting Society

The main powers of the collecting societies in Greece are the following:

- to manage the economic rights of the right holders;
- to enter into agreements with users on the terms of exploitation of the works as well as on the due percentage and/or reasonable remuneration;
- to collect the equitable remuneration in case of compulsory licences;
- to distribute the amounts received to the right holders;
- to conclude representation agreements with other (national or foreign) collecting societies;
- to grant multi-territorial licences for online rights in musical works; and
- to undertake any action for the protection of the rights of the right holders.

### 6.3 Synchronisation Rights

There is no explicit reference to synchronisation rights in the Greek Copyright Law. However, based on case law and prevailing legal theory, the synchronisation right falls within the scope of the broader reproduction right, since in order for a musical work to be incorporated/fixed in an audio-visual work, a prior act of reproduction of the musical work is required.

## 7. Exceptions to Copyright

### 7.1 Fair Use Doctrine/Fair Dealing

Greek copyright legal system does not follow the “fair use doctrine”. The law only provides for an exhaustive list of quite detailed limitations and exceptions to copyright. These statutory limitations are the following:

- reproduction for private use and, in case of use of technical means for the reproduction, a reasonable remuneration is due (compulsory licence);
- quotation of short extracts from lawfully published works for the purpose of providing support for a case advanced by the person making the quotation or a critique of the position of the author;
- reproduction for educational and teaching purposes;
- reproduction for the benefit of non-profit libraries and archives;

- reproduction in lawfully published anthologies of literary works of more than one authors, after the author's death;
- reproduction of films for the benefit of National Cinematographic Archive for the preservation of the films;
- reproduction for administrative and judicial purposes;
- reproduction and communication to the public for information purposes;
- occasional reproduction and dissemination by mass media of works permanently sited in public places;
- public performance or presentation (communication to the public) of a work on special occasions, ie, on official ceremonies and within the framework of staff and pupil or student activities at an educational establishment;
- communication to the public, making available to the public and reproduction of orphan works for certain uses (see **3.2 Joint Authorship**);
- exhibition (communication to the public) of works of fine art by museums;
- presentation (communication to the public) of works of fine art and their reproduction in catalogues for the promotion of their sale;
- reproduction for the benefit of persons who are blind, visually impaired or otherwise print-disabled; and
- temporary reproduction, as an essential step of a technical procedure, and whose sole purpose is to enable a transmission in a network between third parties by an intermediary or a lawful use of a work, and which have no independent economic significance.

All the above exceptions and limitations are subject to the three-step-test clause, which must be applied on an ad hoc basis by the Greek Courts. This means that in order for a Greek Court to rule whether an exception is applicable or not, it has to examine whether the case at issue is a certain specific case which does not interfere with the normal exploitation of the protected work and does not cause unreasonable damage to the interests of the legitimate holder.

## 7.2 Private Copying

Greek Copyright Law provides for a specific exception to the reproduction right for private use, which allows individual users (and not enterprises, services or organisations) to reproduce a lawfully published work for their own private use, without the consent of the author and without any payment. In case that the reproduction takes place with the use of technical means, a compulsory licence is provided by law, meaning that in such cases a reasonable remuneration is due to the respective right holders.

This remuneration is calculated at a percentage of the value of the relevant technical means used for the reproduction specifically determined in law and which is different for each category

of means. The remuneration is due by the importers or the producers of these technical means and is subject to compulsory collective management. As an exception to copyright, reproduction for private use applies to a certain case only on the condition that the three-step-test criteria are also met.

## 7.3 Reproductions of Cultural Goods/Buildings

Greek Copyright Law provides for an exception regarding protected works sited in public spaces. More specifically, the law allows the occasional reproduction and dissemination by mass media of images of certain categories of protected works (works of architecture, works of fine art, works of applied art and photographic works) sited permanently in public spaces. "Occasional" is a reproduction or dissemination, when it has a secondary and exceptional character and does not form an essential part of the respective act. These reproduction and dissemination acts must not be of a commercial nature and the exception is applicable only if the three-step-test criteria are met.

## 7.4 Activities Carried Out by Intermediaries

Certain temporary acts of reproduction of protected works, which do not have an independent economic significance and are indispensable for the transmission of these works within a network, are often carried out by intermediaries, such as Internet Service Providers. Therefore, the introduction of an exception for the lawful provision of internet services and for the exclusion of liability of the Internet Services Providers throughout this process was crucial. Article 5, paragraph 1 of 2001/29/EC Directive provides for such an exception, which was mandatory for all member-states and, therefore, it has been implemented in the Greek Copyright Law.

Based on this exception, acts of reproduction which are temporary, transient or incidental, form an integral and essential part of a technological process, do not have an independent economic significance and whose sole purpose is to enable a transmission in a network between third parties by an intermediary are exempted from the reproduction right.

## 7.5 Satire and Parody

Greek Copyright Law does not include an exception for satire and/or parody. It is argued, however, that the right for parody or satire may be established on the constitutional right of freedom of speech and art.

## 7.6 Copyright: Freedom of Speech/Right of Information

Freedom of speech and right of information are of paramount importance for the democracy in Greece, enjoying the highest constitutional protection. However, the implementation of these core human rights as well as of other rights - such the ones that serve the public interest for the promotion of scientific progress

or for education - when it refers to works protected under copyright, raises conflict issues between the rights of the users of the works and the copyrights of the authors, due to the absolute and exclusive nature of the latter. In Greece, this conflict is mainly addressed by the introduction of certain exceptions and limitations in Greek Copyright Law, which ensure that certain aspects of these rights are freely enjoyed by the respective beneficiaries (public at large or certain individuals), meaning that the latter are allowed to proceed to certain uses of protected works, without the permission of the author and without any payment.

Among the exceptions that serve the freedom of speech, is the exception that allows the quotation of short extracts from lawfully published works, whereas among the exceptions that serve the right of information is the one that allows the reproduction and communication to the public of works seen or heard in the course of a current event for the purpose of reporting this event by the mass media, or the reproduction and communication to the public of certain types of works for the purpose of giving information on a current event by the mass media and the occasional reproduction and communication by the mass media of images of certain types of works which are sited permanently in a public place (for a full list of exceptions and limitations see **7.1 Fair Use Doctrine/Fair Dealing**).

According to prevailing legal theory in Greece, Greek Courts have to follow a strict interpretation of these exceptions and limitations and further examine each one of them under the light of the three-step test clause. During this process, it is their duty to find the adequate balance between the conflicting rights and decide which one of them should prevail on an ad-hoc basis.

## 8. Neighbouring/Entrepreneurial/Copyright-Related Rights

### 8.1 Neighbouring Rights

Greek Copyright Law provides for the following exhaustive list of beneficiaries of neighbouring rights:

- performers/performing artists;
- producers of phonograms and of audio-visual works;
- radio and television broadcasting organisations;
- publishers; and
- persons who, after the expiry of copyright protection, lawfully publish or communicate to the public for the first time a previously unpublished work.

With the exception of performers who may only be natural persons, all the other beneficiaries may be either natural persons or legal entities. Performers enjoy both economic and moral rights in relation to their performances, while all the other beneficiar-

ies are granted only with economic rights in relation to their contributions. All these rights are exhaustively listed in law. The economic rights of the performers are almost similar to the ones granted to authors (fixation, reproduction, distribution, rental and public lending rights, etc), while their moral rights are more limited (authorship right and right to prohibit any alteration/distortion of their performances). In case of radio-tv broadcasting or of communication to the public of sound recordings which have been lawfully produced and incorporate their performances, performers simply enjoy a right for equitable remuneration (compulsory licence).

The economic rights granted to producers of phonograms and audio-visual works are the same (reproduction, distribution, rental and public lending, making available right, importation right). The only difference is that the producers of audio-visual works are also granted with an absolute broadcasting right, while the producers of phonograms are simply entitled to an equitable remuneration in case of radio-tv broadcasting or communication to the public of their lawfully produced phonograms (compulsory licence). Radio and television organisations enjoy broad protection in relation to their transmissions, holding, among others fixation, reproduction, distribution and communication to the public rights. Publishers are only granted with a reproduction right in relation to the type and page setting elements of their published works.

Finally, the economic rights of persons who lawfully publish or communicate to the public for the first time, after the author's death, a previously unpublished work, are the same with the economic rights of the author, with the exception that the term of protection of these rights is shorter (25 years from the time when the work was first lawfully published or communicated to the public).

### 8.2 Transferring/Licensing/Sale of Neighbouring Rights

All the neighbouring rights, with the exception of the ones granted to performers which are non-transferrable, may be transferred or licensed via respective agreements to third parties. The economic rights of performers may only be licensed to third parties via exploitation or licensing agreements. Any such transfer/licensing/exploitation agreements must be made in writing in order to be valid.

It is argued that the rules provided by law in relation to transfer/exploitation/licence agreements related to copyright (see **4.4 Transfer of Rights**) apply mutatis mutandis to the respective agreements related to neighbouring rights.

## 8.3 Copyright Exceptions Applicable to Neighbouring Rights

All the exceptions and limitations applicable to copyright apply *mutatis mutandis* to neighbouring rights.

## 9. Copyright Infringement and Litigation

### 9.1 Types of Copyright Infringement

Any unauthorised use of a protected work which falls within the scope of any exclusive (economic or moral) right is considered as an infringement, unless any of the exceptions and limitations to copyright may apply.

### 9.2 Defences against Copyright Infringement

In case of copyright infringement, the alleged infringer has several defences against the respective claim of the right holder, depending on the subject-matter and the facts of each case. The alleged infringer can mainly claim that:

- the general criteria for the protection of the subject matter at issue under copyright law are not met (especially, lack of originality or lack of certain expression);
- the alleged infringing act lies within the scope of a copyright exception or limitation;
- the alleged infringing act is authorised via an existing valid licence;
- the term of protection of the work has been expired;
- a statute of limitation to the rights of the right holder must apply; and
- the claims of the right holder are abusive, due to the specific circumstances related to the case.

### 9.3 Proceedings Available to the Copyright Holder

In case of copyright infringement, copyright holders may initiate litigation proceedings. Based on recent legislation in Greece, attorneys are required to inform their clients in writing of the possibility of mediation in all civil and commercial cases that may lead the parties before a court as well as of the compulsory nature of an initial mediation session in cases (including copyright disputes) with a subject-matter higher than EUR30,000. If the parties agree to mediate, they enter into a written mediation agreement and follow the mediation procedure even after the first session. If not, the parties may proceed to court litigation by submitting evidence that they have been informed of the mediation and the first mediation session, and for conducting the first mediation session, in cases where such session is compulsory. Otherwise, the relevant lawsuit will be dismissed as inadmissible.

Furthermore, it is quite usual for the right holders to serve a default notice to the infringer, prior entering into any litigation, asking for the cessation of the infringement and warning about forthcoming court actions, however this action does not form a compulsory procedural step. Moreover, in case of infringements on the internet, the law provides for an administrative proceeding before the so-called Online Copyright Infringement Committee, a specialised committee formed by decision of the Minister of Culture and Sports.

In this case, the copyright holder must submit a pro-forma application for the termination of the infringement to the Committee, along with any documents and evidence that may establish his right. The application is admissible only if the right holder has made prior use of the procedure which the provider had determined, and this procedure was concluded within reasonable time but with no result. Within a ten-day period, the Committee has to decide whether it will pursue the case or file it, in case of informalities or lack of substantial basis.

### 9.4 Jurisdiction for Copyright Proceedings

Copyright cases are heard before the Greek civil and criminal courts. The local jurisdiction of civil courts is determined either by reference to the agreement made between the litigating parties, if there is such an agreement and the copyright case refers to a contractual breach, while in case of tortious liability or absence of a relevant agreement between the parties, by the provisions of the Code of Civil Procedure, which state that competent is the court where the defendant is domiciled or has their residence. Special copyright divisions operate only in the civil courts of Athens, Piraeus and Thessaloniki, while in any other place in Greece the cases are heard before other (non-specialised) divisions of the competent courts.

### 9.5 Necessary Parties to Copyright Infringement Proceedings

Necessary parties to copyright infringement proceedings are the right holder and the alleged infringer. Licensees may participate in pending proceedings initiated by the right holder, by filing an intervention in favour of the right holder, if they can prove legitimate interest in the outcome of the case. Whether a licensee is allowed to file or not for protection, in its own name, against copyright infringement of the rights licensed to them, ie, to be the one to initiate a relevant proceeding instead of the right holder, depends on their agreement with the respective right holder. In case that the licence agreement does not include any clause specifically prohibiting such action, the licensee is entitled to seek legal protection in their own name.

### 9.6 Third Parties to Copyright Proceedings

Third parties can be involved in copyright court proceedings, by filing either an additional intervention, for the benefit of

one of the initial parties, or a main intervention, in case that they claim the right in dispute for themselves. In the first case, the intervening party simply supports the initial party (either plaintiff or defendant) and therefore any remedies granted, or sanctions ordered by the court do not apply to it directly. However, its legal interest is affected by the outcome of the case. In the second case, the intervenor becomes an equivalent party to the proceedings, claiming for themselves the subject matter of the dispute. Therefore, in case of successful petition, it can enjoy remedies and protection as the right holder.

## 9.7 Urgent Measures

In case of present or threatened infringement of copyright, the right holder may file a petition for temporary measures before the competent court and even ask for a temporary injunction. If the court finds that there is a likelihood of emergency or for the prohibition of an imminent risk, it may issue a temporary order for precautionary seizure of items in the possession of the alleged infringer that constitute means of commission or product or evidence of the infringement, or for the detailed description or photographing of such items or for any other measure that the court deems appropriate in order to prohibit further infringement of the rights at issue or the loss of any evidence. In case of an infringement that takes place on a commercial scale, the ordered urgent measures may include precautionary seizure of the alleged infringer's assets, including the blocking of its bank accounts.

## 9.8 Role of Experts in Copyright Proceedings

There is no special provision for the participation of experts in copyright proceedings. Based on the provisions of Code of Civil Procedure, a court may appoint one or more experts if for the evaluation of a specific matter specialised knowledge of science or art is required, while it is obliged to appoint such experts in case that there is such a need and a relevant claim is filed by any of the parties. It is not usual for Greek Courts to appoint such experts in copyright proceedings.

## 9.9 Counterfeits and Parallel Imports

Custom authorities are vested, by Greek Copyright Law, National Customs Code and EU Regulation 1383/2003, with the authority to run controls and enforce administrative sanctions, in case of import, sales or distribution of counterfeit products, infringing copyright protected works, and proceed to the seizure of such products. Parallel imports of copyright related products lie within the scope of the exclusive economic rights of the right holder (mainly of the importation and distribution rights) and therefore are generally prohibited, without the latter's consent. The only exception to this rule is the exhaustion doctrine which applies in relation to distribution right, meaning that a parallel import of a product, which constitutes a protected work, is allowed within the EU, only where the first sale or other

transfer of ownership in the EU of this product is made by the right holder or with their consent.

## 9.10 Remedies and Sanctions

Greek Copyright Law provides for civil, criminal and administrative remedies/sanctions in case of copyright infringement. In relation to civil remedies, right holders may seek the recognition of their rights and/or the cessation and future omission of the infringement. Moreover, in case of an intentional infringement, right holders may also be indemnified for damages and the relevant indemnification cannot be lower than twice the legally required or normally payable remuneration for the form of exploitation in which the infringer proceeded without licence, and for moral damages.

Regardless of whether the infringement was intentional or not and instead of seeking damages, right holders may seek either the payment of the sum accrued by the infringer from the unlicensed exploitation of a work or the profit gained by the infringer from such an exploitation. In relation to criminal and administrative remedies/sanctions, see **9.11 Copyright Infringement as Administrative or Criminal Offences**.

## 9.11 Copyright Infringement as Administrative or Criminal Offences

Copyright infringement may constitute both an administrative and criminal offence. In respect of criminal offences, copyright infringers face either pecuniary criminal penalties and/or imprisonment. The relevant court hearing takes place before the competent criminal courts and the procedure is initiated if a prior criminal suit was filed by the right holder or ex officio.

In relation to administrative remedies, right holders whose rights are infringed on the internet may apply for the removal or block of any relevant unlawful or unauthorised content before the Online Copyright Infringement Committee or any other appropriate measure for the cessation, prevention of recurrence or/and prevention of infringement.

In case of non-compliance of the infringers with the decision of the Committee, the latter may impose an administrative fine for each and every day of non-compliance. Furthermore, the law provides that certain administrative fines may be imposed by the competent administrative authorities, being the Unit of Special Controls the Police, the Port and the Customs authorities, to any person who reproduces, sells or otherwise distributes to the public or possesses with the purpose of distributing a computer program or to street vendors distributing to the public by sale or by other means, or possess with the intention of distributing sound recordings on which a work protected by copyright law has been recorded.

## 9.12 Appellate Procedure for Copyright Proceedings

The appellate procedure for civil and criminal copyright cases is regulated under the common civil and criminal procedural law. Courts of Appeal are competent for appeals against decisions of the Courts of First Instance, while special copyright divisions currently operate only in the Court of Appeal of Athens, Thessaloniki and Piraeus.

## 9.13 Costs of Copyright Litigation

The right holder filing for protection is responsible for paying the litigation costs, while upon the issuance of the court decision, the defeated party is ordered by the court to pay to the winning party all the legal costs and other expenses, which include any other pertinent expenditure, such as witness costs, attorney fees, fees of experts and technical consultants of the parties and expenses made for the discovery of the infringers, reasonably incurred by the winning party.

## 9.14 Alternative Dispute Resolution

Alternative dispute resolution (ADR) is not a common way for settling a copyright case in Greece. Right holders prefer to resort to the courts for the protection of their rights, mainly due to insecurity reasons related to the costs of ADR procedures and to the experience of the mediators/arbitrators. The available ADR procedures are:

- mediation, provided by law No 4640/2019, which regulates where a civil or commercial case may be resolved through mediation and where an initial mediation session is compulsory in order for a lawsuit to be heard before a court (copyright disputes with a subject-matter higher than EUR30,000 fall within the latter category); and
- contractual arbitration clauses which may be agreed in the context of any copyright-related agreements concluded between the parties.

# GREECE LAW AND PRACTICE

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*Contributed by: Pigi Konstantinou, Souriadakis Tsibris Law Partnership*

**Souriadakis Tsibris Law Partnership** is a law firm based in Athens, Greece. The firm is active across a wide range of practice areas and known for its corporate/M&A, IP, financial regulation and banking law practices. Souriadakis Tsibris has a strong presence in the evolving area of copyright law and its relative practice features representation of various national and

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