

# COPYRIGHT – OVERVIEW; COPYRIGHT CONTENTS – PARTICULARITIES

Ovidia IONESCU\*

## Abstract

*Art, under its various forms, including writings, drawings, inventions, represents the material externalization of the human intellect. The creator, i.e. the author, must benefit from all the rights resulting from his/her creation and protect it, so that the latter is recognized to belong to them, throughout time. The property right over the creation is different, depending on who has created it, its importance, if the creation has been produced in collaboration with others or by exclusivity, the type thereof. Once acknowledging and registering the property right over the creation, the author shall benefit also from all the other related rights, respectively the right to reproduce, distribute, import, lend, broadcast the creation on television, respectively any right aiding in bringing it to the knowledge of third parties in a controlled fashion and with the appropriate pay due for it.*

**Keywords:** *copyright, moral rights, patrimonial rights, case law, rules.*

## 1. Introduction

The field covered by this study's theme refers to intellectual property, i.e. copyrights. The author is the creator, and it is still him/her the one who benefits from patrimonial and non-patrimonial rights in relation therewith. The importance of the study consists in the fact that it shows the value of the creation and the fact that this only helps us in our daily life and therefore it should be appropriately protected. Its protection is ensured by adopting and maintaining a relevant legislative framework, which, considering the evolution of society – evolution based on creation – it should keep the pace with it and be appropriately updated, in such a way that the negative elements are correspondingly eliminated or penalized, and the positive is propagated and encouraged appropriately. Without an optimum domestic and international legislative system, the creative spirit and implicitly the creation may stagnate, respectively the lack of protection would no longer aid the individual in publicizing its creation (results of his/her mind's work). The contemplated objectives are represented by an identification of the rights and a detailing thereof. In this sense, in order to respond to the undertaken objectives, details will be presented at length with regard to the patrimonial and non-patrimonial copyrights, based on the detailed presentation provided by Law no. 8/1996. By reference to the stage of knowledge in the field, I may state that both me and each and every one of us, are aware of the importance of creation and the need to protect it, since this helps us manifest the creative spirit, and our effort may be rewarded appropriately, since there is a supportive legislative system. Specialized literature largely discusses this theme, intellectual

property rights being given an importance in line with the ideas in this chapter.

## 2. Content

The creative capacity of each of us may turn us into an author, this creative capacity representing a way of externalizing our personality and implicitly, our intellect. We can become creative in any field, even if it does or does not have a correspondent in the profession of each of us, some creations not being related in any way whatsoever with professional experience. As far as creation is concerned, its author may decide whether to bring it or not to the public's knowledge, and when, and if deciding to do so, then, automatically, it undertakes the moral and patrimonial liability in relation thereto.

Thus, Article 1, point 1 of Law no. 8/1996 on copyrights and other related rights, stipulates that: *"The copyright over a literary, artistic or scientific work, as well as over other intellectual creations, is acknowledged and guaranteed in the conditions of this law. This right is connected with the author's person and implies moral and patrimonial features"*<sup>1</sup>

Moral features refers to the fact that only the person who created the work or the one who has the legal right over it, may disclose it to the public and decide on whether he/she wishes to enjoy all patrimonial rights, i.e. material and/or moral benefits, as the case may be.

Thus, we can deduce that, when the creator, i.e. the author of some work, decides to publish his/her creation, then the decision must also be made on the related patrimonial rights: at that precise moment, patrimonial rights also arise automatically.

---

\* PhD candidate, Faculty of Law, "Nicolae Titulescu" University of Bucharest (e-mail: [ovidiaionescu@yahoo.com](mailto:ovidiaionescu@yahoo.com)).

<sup>1</sup> Law no. 8/1996 on copyrights and other related rights, Article 1.

The publication of the work that arose automatically therefrom, is also, practically, a system aimed at ensuring the protection of the work's author and implicitly, of the work, i.e. it is a system ensuring him/her that his/her rights over the work shall always be recognized, the fact that the latter shall be made public as it was created and that it shall not be appropriated by any third parties or that others shall make use of that creation, without recognizing his/her rights, both moral and patrimonial.

In this sense, it was necessary to pass laws aimed at protecting intellectual property, both at national and international level, such that the work, its author, as well as all the rights and obligations arising out of and referring to this matter, be appropriately protected.

Recently, considering the evolution and needs of society, many of us rely on this creative spirit in order to obtain patrimonial advantages, respectively the need for material benefits, or their contemplation as main purpose thereof, automatically determines a development of the creation, especially in the IT system, which represents a creation that is "a little far-fetched" I might add. In the IT system, the "new" has monopolized everything and we have started to become ever more addicted to everything that is being created in this field, without paying any attention to the substance thereof, respectively to the human values and principles which underlie our society. Precisely for this reason, the legislative system is frequently amended, so as to be able to cope with so many changes – which must be controlled and allowed to develop, yet within the framework of legislative enactments.

Creation is one of the basic components of evolution, respectively an element of society and a factor of its development.

#### **Moral (non-patrimonial) copyrights**

Law no. 8/1996, in Article 10, identifies moral (respectively non-patrimonial) copyrights pertaining to the creation's author, i.e.:

*"Art. 10. – The author of a work has the following moral copyrights:*

*a) the right to decide whether, how and when the work shall be made public;*

*b) the right to claim the recognition of his/her capacity as the work's author;*

*c) the right to decide under what name the work will be made public;*

*d) the right to claim the observance of the work's integrity and to oppose any changes that might be attempted onto it, as well as to any*

*infringement that might be committed in relation thereto, if prejudicing his/her honour or reputation;*

*e) the right to retract the work, indemnifying, if need be, the owners of the rights of use, who have been prejudiced further to the retraction. „<sup>2</sup>*

**The right to decide whether, how and when the work shall be made public, respectively the right to disclose the creation.**

The lawmaker showed the rights of the author of a work over his/her creation, ever since deciding to bring it to the attention of the public.

The first right is to decide whether the work shall be or not brought to the attention of the public, the time when the work shall be brought to the attention of the public, as well as the manner in which this shall be publicized.

Everyone's creative spirit and the originality of each individual's work, make us be different in society and give value to the creative individual, respectively our capacity to express our thoughts and their efficacy that help us stand out. At the same time, the person also has the right to decide when to publicize his/her work. Thus, professor Stanciu D. Carpenaru was saying that *"only the author who is aware of the moral responsibility and sometimes even legal responsibility that he/she undertakes, may discretionally appreciate if the work reached the level required when it can be brought to the attention of the public. Being one of the most personal rights, the right to bring the work to the attention of the public pertains to the author exclusively"*<sup>3</sup>

From my point of view, the moment when an author decides to publicize their work, takes place when the latter is published, whereas the work's dissemination represents a material fact whereby the work is actually made public, i.e. concrete. Thus, it would be difficult to prove the subjective opinion on the work's disclosure which states that the right to disclose the work is the right to decide on its publication and not its actual publication. I thus embrace the opinion according to which *"what is relevant is the time when the decision is externalized in one way or the other, the mere internal resolution not being likely to produce legal consequences."*<sup>4</sup>

**The right over the capacity of author, respectively the paternity right**

In doctrine, this right is called "the right to the paternity of the work" and shows the direct and implicit connection between the author and the result of his/her intellectual creation – namely the work. The right to the capacity of author is one of the basic components of intellectual rights, in general, and consists in acknowledging the right of the actual

<sup>2</sup> Law no. 8/1996 on copyrights and other related rights, Article 10.

<sup>3</sup> Stanciu D. Carpenaru, *Drept Civil. Drepturile de creatie intelectuala. Succesiunile* (Civil Law. Intellectual Property Rights. Successions), Editura Didactica si Pedagogica Bucuresti (Bucharest, Didactical and Pedagogical Publishing House), 1971, p. 43.

<sup>4</sup> Viorel Ros, Dragos Bogdan, Octavia Spineanu – Matei, *Dreptul de autor si drepturile conexe. Tratat. (The copyright and other related rights. Treatise)*, All Beck Publishing House, 2005, p. 203.

author of a scientific, literary or artistic work. We can distinguish two characteristics here, i.e. a positive one which is given by the fact that the author has the right to claim, at any time, the capacity of author over the creation, and a negative one, which is given by the fact that he/she has the right to oppose to any act of challenge against his/her capacity as author brought by a third party. The right to the paternity of the work gives the author the right to decide under what name his/her creative work shall be made public. Once the copyright arises, this is imprescriptible. The transmission of the property right over the paternity of the work is done by succession, according to common law, and, if no heirs exist, such rights shall be transmitted to the collective management body who has administered the copyrights or to the body with the highest number of members in the respective creative field.

**The right to decide under what name the work will be brought to the attention of the public, respectively the right to a name**

According to doctrine, this right is deemed to be “a component of the capacity of author”<sup>5</sup> “the positive aspect of the right to the paternity of the work involves also the right of the author to a name, i.e. the right to decide whether the work shall be brought to the knowledge of the public under his/her name, under a pseudonym or without specifying an author’s name”. Thus, this right is limited, it does not mean that the author has the right to decide any name he/she wishes, in fact he/she has the right to decide whether the work shall go public under his/her name or under a pseudonym. The author shall keep the right to waive, at any time, anonymity, and disclose his/her identity – right pertaining to him/her exclusively, his/her heirs not being able to waive the pseudonym, respectively the exercise of the right to a name is not transmissible via succession.

**The right to having the integrity of the work observed (work inviolability)**

A creative work must be respected in its integrity, as it has been published, third parties not having the right to intervene thereon. The Romanian law prohibits the acts and facts that may prejudice the honour and reputation of the author – clause which takes into account also the provisions of the Bern Convention, respectively Article 6 bis, point 1, which provides that “Independently from patrimonial copyrights and even after assigning such rights, the author shall preserve the right to claim paternity over the work and oppose any deformation, mutilation or other modifications of the work or of any other infringements thereof, prejudicing his/her honour or reputation”.

The right to the inviolability of the work entails the prohibition of any modifications thereof (regardless of whether they are additions, changes of content or of expression) applicable to the whole content of the work, namely, title, chapters, everything that makes up the work.

**The right to retract**

The right to retract is defined by specialized literature as “counter-weight of the right to disclose the work and the direct consequence of the absolute and discretionary character thereof”. Thus, the author has the right to withdraw his/her work previously published, irrespective of the reasons leading him/her to the taking of such decision and without needing to present any explanations in relation thereto. Also, if this retraction presupposes the indemnification of the legal users of the work, by contrast to the prejudices caused to them because of retracting the work, they shall be compensated by the author. Professor Stancu D. Carpenaru explained that “the right to decide on bringing the work to the knowledge of the public implies the right of the author to revise the taken decision, despite having concluded an agreement (for example, for the editing of the work)”, while Yolanda Eminescu deems that “The right of retraction represents the counter-weight of the disclosure right and the direct consequence of the absolute and discretionary character thereof. It nevertheless constitutes a distinct right, the fate of which is not indissolubly connected to the disclosure right, which becomes evident in the case of posthumous works.”<sup>6</sup> The opinion has not been unitary across Romanian doctrine, which means that certain authors have interpreted this right as a limited one, i.e. this right might be invoked and might be applied only until the conclusion of the agreement, and after disclosing the work, this could no longer be done except on serious grounds, and others, such as Yolanda Eminescu, have claimed that this right pertains to the author, who may exercise it at any time.

**Patrimonial copyrights**

The copyright gives its titleholder several rights arising out of the exclusive right to exploit the work. Despite the fact that the law, in principle, allows the author to exploit the work by himself/herself, usually there is another person intervening to limit his/her benefits in economic terms.

According to Article 12 of Law no. 8/1996, patrimonial rights contained by copyrights are the following:

“The author of some work has the exclusive patrimonial right to decide on whether, how and

<sup>5</sup> Yolanda Eminescu, *The copyright*, p. 155, respectively.

<sup>6</sup> Yolanda Eminescu, *Dreptul de autor (The copyright)*, p. 149.

when his/her work will be used, inclusively to consent to the use of the work by other persons.”<sup>7</sup>

Article 13 provides that:

“The use of a work gives rise to patrimonial rights that are separate and exclusive, of the author to authorize or forbid:

- a) the reproduction of the work;
- b) the distribution of the work;
- c) the import of the work with a view to selling copies thereof on the domestic market, with the author’s consent;
- d) the lease of the work;
- e) the lending of the work;
- f) public communication of the work, directly or indirectly, by any means, inclusively by putting the work at the disposal of the public, such that it can be accessed at any place and at any time chosen individually by the public;
- g) radiobroadcasting of the work;
- h) retransmission of the work via cable TV;
- i) creation of derived works out of the main work.”<sup>8</sup>

Patrimonial copyrights are subjective rights deriving from the decision of the author to bring them or not to the attention of the public and to use them to his/her own interest or to the interest of his/her legal successors in rights. Further to the decision to publish the work, he/she will benefit also from the resulting patrimonial rights, i.e. he/she will obtain uses further to its publication. Bringing the work to public attention is distinct from the begetting of uses, respectively, an author, when publishing a work, does not obtain only uses, whereas the effect of publishing a work is represented by the obtaining of patrimonial rights.

#### **The reproduction of the work.**

“In the sense of this law, reproduction shall mean the full or partial realization of one or several copies of some work, directly or indirectly, temporarily or permanently, by any means and under any form, inclusively by performing any audio or audiovisual recording of the work, as well as the permanent or temporary storage thereof by electronic means.”<sup>9</sup>

Thus, starting from this definition, the object of the reproduction is based on and regards the work achieved by the author. The latter, before making it public, has printed it out in a form that is “ready for printing” reflecting its creation, following that, in order to be brought to the attention of the public, it shall be multiplied. A reproduction is also considered when the work, after having been represented and executed, has an interpretation

thereof set, multiplied and broadcast. In this case, the object of the reproduction may be represented both by the work, printed out in a format that is “ready for printing” and the interpretation which is a separate creation from the main work. Thus, every interpretation of the initial work is a protected work, inclusively against unauthorized reproduction. By reproduction we understand the manner of making the work public, by means of printing, photocopying, in cinemas, via the internet, etc.

The unauthorized reproduction is sanctioned by the law, providing appropriate sanctions depending on the seriousness of the deed, mentioning that the unauthorized reproduction to commercial purposes of the works actually is an act of piracy.

#### **The distribution right.**

“In the sense of this law, distribution refers to the sale or any other kind of transmission, onerous or free of charge, of the original or copies of a work, as well as their public dissemination.

The distribution right is exhausted after the first sale or transfer of the property right over the original or the copies of some work, on the domestic market, by the holder of the rights or with his/her consent.”<sup>10</sup>

Distribution shall mean the transmission, under any form, onerously or free of charge, of the original or copies of the work, as well as their publicizing. Making them public is carried out by any method, respectively: sale, assignment, lease, loan, mentioning that the author shall enjoy all the rights regarding the protection of his/her work, and the benefits related to their publicizing, with special focus on the material side.

#### **The right to import the work.**

“In the sense of this law, import shall mean the introduction on the internal market, with a view to their sale, of the original and copies legally made of a work present on any kind of support.”<sup>11</sup>

Thus, the use of a work automatically denotes the right of the author to authorize or prohibit its import with a view to selling, on the internal market, the copies of his/her work, realized abroad, with the author’s consent.

#### **The right to lease the work.**

“In the sense of this law, lease shall refer to the provision for use, for a limited period of time, and for a direct or indirect economic or commercial advantage, of a certain work.”<sup>12</sup>

<sup>7</sup> Law no. 8/1996 on copyrights and other related rights, Article 12.

<sup>8</sup> Law no. 8/1996 on copyrights and other related rights, Article 13.

<sup>9</sup> Law no. 8/1996 on copyrights and other related rights, Article 14.

<sup>10</sup> Law no. 8/1996 on copyrights and other related rights, Article 14<sup>1</sup>.

<sup>11</sup> Law no. 8/1996 on copyrights and other related rights, Article 14<sup>2</sup>.

<sup>12</sup> Law no. 8/1996 on copyrights and other related rights, Article 14<sup>3</sup>.

Thus, the use of a certain work gives rise to the patrimonial right of the author to authorize or forbid the lease, i.e. placement at the disposal of third parties, for a limited period of time, for a fee, of a work or of protected copies thereof.

#### **The right to lend the work**

“(1) In the sense of this law, loan shall mean the provision for use, for a limited time and without a direct or indirect commercial or economic advantage, of a piece of work via an institution allowing the access of the public to this purpose.

(2) A library loan does not require the authorization of the author and entitles the latter to a fair remuneration. This right cannot be waived.

(3) The fair remuneration as provided for at para. (2) is not due when the loan has been done via libraries attached to higher education institutions and via public libraries with free access.

(4) Borrowing works that are recorded on audio or audiovisual support can only take place after 6 months as of the first distribution of the work.

(5) The loan right does not exhaust after the first sale or transfer of property right over the original or copies of a piece of work, on the market, carried out or consented to by the rights’ owner.”<sup>13</sup>

The use of a piece of work gives rise, for the author, to his/her patrimonial right to authorize or forbid the loan of the work. The legislative article details the possibilities available for the author in this sense, as well as the legal effects, leverages aiding in propagating knowledge of the creations,

yet with the author’s guarantee that his/her work is protected and his/her labour remunerated pro rata with the effort made.

#### **Other means of communicating the work**

The work may be brought to the knowledge of the public also by public communication, radiobroadcasting and retransmission via cable TV, currently the latter being the quickest and most common communication method, adopted especially by young people.

### **3. Conclusions**

The directions approached in this article mainly concern discussions regarding the creation and its protection, respectively the work’s author. The result consists in the fact that a detailed identification of copyrights helps us develop our creative spirit and we understand how we are protected by the legislative framework adopted in this field. Therefore, the creative individual is free to decide on whether it shall publish or not his/her work, when to do so, he/she having the right to decide on the limits of the publication, as well as on the benefits the creation will bring about for him/her. My suggestion for future research on the subject is to deal with a theme related with the impact of IT evolution on society, especially on individuals’ personality and on human values.

#### **References:**

- Law no. 8/1996 on copyrights and other related rights;
- Stanciu D. Carpenaru, Drept Civil. Drepturile de creatie intelectuala. Succesiunile (Civil Law. Intellectual Property Rights. Successions), Editura Didactica si Pedagogica Bucuresti (Bucharest Didactics and Pedagogical Publishing House), 1971;
- Viorel Ros, Dragos Bogdan, Octavia Spineanu – Matei, Dreptul de autor si drepturile conexe. Tratat. (The copyright and other related rights. A Treatise), All Beck Publishing House, 2005;
- Yolanda Eminescu, Dreptul de autor (The copyright), Editura Lumina Lex, 1996.

<sup>13</sup> Law no. 8/1996 on copyrights and other related rights, Article 14<sup>4</sup>