THE COPYRIGHT IN THE INFORMATION SOCIETY

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Abstract

The contemporary society has imposed new demands in the development and application of copyright as a result of structural changes which occur as a result of developments in science, technology and especially communication technologies and of informatics. Legal doctrine highlights axiomatic truth according to which the "environment created by technological developments" brings forward the profound informational dimension of human being in the contemporary society. In this context the integration and the harmonization of legislation of the Member States of the European Union leads to a complex and dynamic process by which the copyright called to legally protect intellectual creation in contemporary society, acquires a universal vocation in the contemporary society, because there are no barriers or impediments in its spreading especially due to the phenomenon of multiplication and improvement of means of information and communication

Keywords: *intelectual property, intellectual creation, information period, right to information, incorporeal right.*

1. Introduction

The continuous multiplication and perfection of communication and computer technologies, as well as the gradual development of scientific knowledge and techniques in general are all aspects which define the contemporary age and these objective factors which define law give rise to new challenges in regard to enforcing positive law.

Thus, specialty doctrine shows that "the surrounding environment" created by the technical evolution gives way to more and more talks about the profoundly computerized nature of people nowadays[1].

2. Content

Nowadays, more than ever before, access to information, much like the free circulation of information, has become a paradigm concept which allows us to build new horizons by placing scientific research in a society which is more increasingly subjected to the specific effects of globalization. Within this approach, most theoreticians notice, quite justified in our opinion, that, intellectual creation can't be subject to any territorial constraint, as it clearly has an international vocation[2].

At the same time, the rapid circulation of the products of the human spirit is emphasized, as there are no more artificial boundaries in regard to spreading intellectual creation seen as a non corporal good and subject to copyright; this is why this area of human activity is able to circulate and be reproduced extremely easy[3], given the progress of modern communication and information means.

From this perspective, human creation seen from a legal point of view represents a non corporal right, which is distinctly regulated in regard to its legal protection, given the continuous development of communication means used to express these complex rights in the area of legal relations, by valorizing the legal effects they produce.

Based on these coordinates, we can state that, given the present context, the protection of intellectual rights is interconnected with the dynamic of communication and information means and the evolution of these technologies has provided the necessary background in order to expand and diversify the possibilities of knowing and spreading ideas[4]; all of these have created new forms of legal regulation objectified by the natural tendency of unifying the legal systems - the continental and the Anglo-Saxon one - in regard to copyright.

The protection of copyright in the "digital era" requires the harmonization of all moral and patrimonial rights with the natural interest of the general audience, who is the main consumer of information; on the other hand, all these must be included within the legal interest of the member states of international communities, whether these states are members of international organizations or not, the author of a new work and the work itself must be protected; this reality became an axiom which outlines positive law in regard to intellectual creation.

There are more and more opinions which state that all rights which derive from information provide

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[1] I. M. Bârsan, C. Murzea, A. Repanovici, *Aspecte legislative privind dreptul de autor şi accesul deschis la cunoaştere," Legal aspects regarding copyright and open access to knowledge"*, Junimea Publishing House, Iaşi, 2015, p. 7.

[2] A. Circa, *Protecţia drepturilor intelectuale. Actualităţi şi perspective, "Protection of intellectual rights. Present issues and perspectives"*, Universul Juridic Publishing House, Bucharest, 2013, p.9.

[3] Ibidem, p.9.

[4] I. M. Bârsan, C. Murzea, A. Repanovici, *quoted works*, p.9.

new standards in the process of creating laws, as it is influenced by the dynamic of the means used to spread information as well as the natural tendency to conserve the complex content of the right which protects intellectual creation, whether it is the moral side, namely the personality of the author or its patrimonial component.

It was repeatedly stated that the age we live in is without a doubt "the age of information", thus ensuring that each individual has a fundamental right, that of being informed and given access to information[5].

This imperative, without which progress in any area of activity and human creation is unconceivable, must be harmonized with the regulation which governs copyright, thus preserving and valorizing the attributes of this dual right, as seen form the perspective of its legal reality.

Thus, a famed theoretician states that "the nature of copyright is the legal expression of the representation that a society provides for its own culture"[6].

Undoubtedly, any research states "ab initio" access to a primary information, a series of acquired knowledge which must be adapted and developed in future theoretical or experimental constructions which must represent the basis for any future science endeavor.

On a global scale, information is more and more expensive, and access to specialty literature is costly and troublesome; this is why the concept of "open access" became obvious as the "the age of information" is more and more visible as a reality imposed by the science world.

The obvious question which arises is of whether this natural tendency in communication and science by computer means violates some "classical attributes which define the complex nature of copyright". Copyright is the ensemble of rights which have as object non corporal goods, such as copyright and any connecting rights, licenses, stocks in trade, civil clients and so on[7].

As a consequence, we can establish, based on their forming elements, a congruence between intellectual property and the right to private property. Such an opinion is similar to that of the Romanian Constitutional Court, who expressly motivated Decision nr 541/2004 by stating that intellectual property seen "lato sensu" (as patrimonial copyright and as industrial property) is the object of legal protection similar to the right to private property according to article 44 of the Romanian Constitution.

However correct this interpretation may be, we must not ignore the dual character of copyright, as it has a patrimonial side and an extra patrimonial component which is classified as moral copyright included in the wide sphere of personality rights. There is talk of a subjective process of shifting the person of the author over to the work itself during the creation process; this process is manifested even after the death of the author. Thus, a pertinent opinion was pointed out, that according to which non patrimonial copyright is a "special right", distinctive from other rights of personality such as the right to have a private image, the right to honor, the right to the respect of private life and so on.

We can clearly notice that, in regard to the object it involves, we can identify a non patrimonial right presented as a real right over a mobile non corporal good; from the perspective of subjective rights, in regard to its content, we can see a „sui generis"[8] right. Thus, moral rights are an unanimously accepted species of personal non patrimonial rights[9].

Considering the complex nature of copyright, we ask the question of whether open access to information in regard to science research impairs on the attributes of this dual right - copyright - as seen in all its complexity.

There is a tendency within the science community according to which academic research and the research founded by public finances should be accessible freely along with the spread of Information Technology and Communication (ITC) as well as the internet.

We wonder to what extent this free access to information or non expensive information will impair on the patrimonial component of copyright and on the extra patrimonial component, in regard to the moral rights of the author.

The answer is different, as specialty doctrine presents different opinions in continental law, where the conclusions of the German school are opposed to those of the French school. Thus, German school supports the theory of unity of copyright, by placing great importance on the indestructible connection between the work and the personality of the author - thus showing that copyright can't be transferred but it can be licensed or chartered. According to the previously mentioned theory, the two categories of attributes are in sync and in perfect balance, in a state of equality which does not allow the hierarchy of moral rights as opposed to patrimonial ones[10]. In the spirit of this orientation, free access to information and spreading information is „ab initio" restricted by

[5] Ibidem, *quoted works*, p. 8.

[6] J. Cl. Edelman, *Propriete litteraire et artistique*, Fasc.1112, nr.2, apud A.Lucas, HJ Lucas, *Traite de propriete litteraire et artistique*, Liteq Publishing House, Paris, 2006, p. 42.

[7] P. Tafforeau, *Droit de la propriete intellectuelle*, 2 edition, Gualino Editeur, Paris, 2007, p. 29.

[8] T. R. Popescu, *Drept civil*, "*Civil law"*, University Publishing House, Bucharest, 1993, p. 31

[9] A. Circa, *quoted works*, p. 29.

[10] A. Frangon, *Oeuvre litteraire. Droit moral. Champ d' application. Droits de personnalite*, in *Review* "RTD com", 1994, p. 48.

the author of the work, as the work and its creator are closely connected thus making the use of the work more difficult through the legal forms of using the intellectual creation.

The French school offers, through its philosophy, the thesis according to which copyright contains two categories of prerogatives, the moral one objectified by moral rights, which are inherent and the patrimonial prerogative which includes the right to use the work, a patrimonial right which be subject to different legal procedures[11]. The supporters of this theory have pointed out the interdependence of patrimonial rights and the moral rights, as the use of creation depends on the act of divulging it, which is the moral aspect of this right[12].

This school created the opinion according to which copyright has a complex legal nature, containing both a moral right which is included in the wide category of personality rights and a patrimonial right of using the work, which is clearly a real right.

Romanian specialty doctrine - see C. Stătescu, Fr. Deak, St. Cărpenaru – supports the idea that we can distinguish between this duality, as the moral right is more influential and it removes the enforcement of common law rules[13]. This opinion was embraced by the Romanian lawmaker who, in article 1 of the copyright law states that "copyright is strictly connected to the person of the author"[14]. The moral component existed before the patrimonial one and allows for the extension of the personality of the author even after he is no longer alive, as opposed to the temporary character of patrimonial rights which are not a consequence of their legal nature, but the answer to the interest of the public[15].

This situation creates an objective premise regarding the simple valorizing of information by efficient communication, as a result of the accessible means by which the right to use a protected work on a national and international level are transmitted.

As a result of globalization, the world nowadays creates a dynamic process by which "the information person" as a creator of material and spiritual values is called to receive, analyzes, select and form a hierarchy in order to valorize information through his decisions and his behaviors. Thus, a biunique relation is created between the need for information in any human creation and the legal means to protect and valorize the right to intellectual creation; thus, we are currently in a fast and dynamic process of aligning the two great systems of law in regard to intellectual creation, namely continental law and Anglo-Saxon law.

As the present times are characterized by the accelerated development of information technology and communication, the adjustment of legal regulations regarding the intellectual creation rights is in a dynamic process which is particularized by finding new legal tools meant to ensure the rights of authors and to create an optimum background for the security of information.

The national legal background as well as the international one clearly state that the right to have free access to information - see article 19 of the Universal Declaration of Human Rights, article 10 of the European Convention of Human Rights, as well as article 30 of the Romanian Constitution - is an essential element in the context of exercising other fundamental rights, thus manifesting as a positive factor associated with the means of using information, but at the same time, guaranteeing and optimally valorizing the rights resulted from intellectual creation.

In this context, article 19 of the Universal Declaration of Human Rights unequivocally establishes that „free access to information is one of man's fundamental rights".

Any lawmaker would consider the specific legal endeavor of regulating the new social relations of contemporary society in efficient legal texts which would protect both the rights of authors of intellectual creations, as well ensuring the „free circulation of information" within the limits of full security.

Copyright, seen as a positive right, must find the optimum tool through which it can phrase regulations, principles and legal institutions which can protect the subjective rights of authors, without restricting „free access to information".

It was shown in specialty doctrine that the issue which defines „the right over information" is highly complex, an aspect which determines a constant evolution of laws, as it is found in a biunique nature in relation with the changes that occur in the area of information techniques and the spreading of information resulted from intellectual creation, with express reference to technical information.

It is undoubtedly true that „we live in an information age, in which any action of man is centered on collecting, manipulating, categorizing and saving information of any kind[16]; however, all these must not represent acts or facts which are likely to impair on copyright, seen „lato sensu" in regard to its legal nature, but especially in regard to its hybrid content.

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[11] A. Circa, *quoted works*, p. 30.
[12] Ibidem, *quoted works*, p. 30.
[13] Y. Eminescu, *Dreptul de autor, Legea nr.8/1996. Comentarii*, "*Copyright, Law no 8/1996. Comments"*, Lumina Lex Publishing House, 1997, p. 139.
[14] See *Law no 8/1996*.
[15] C. Caron, *Droit d'auteur et droits voisins*, Litec Publishing House, Paris, 2006, p. 225.
[16] I.M. Bârsan, C. Murzea, A. Repanovici, *quoted works*, p. 86.

An extremely rigid law in regard to the legal means of transmitting, transferring and especially the free circulation of information would inherently impair on progress, as access to information which is stored anywhere in the world, as well as the ability to combine and analyze information offers people the possibility of creating new notions, which have added value[17].

Under such conditions of expressing copyright, we are in the presence of an extremely dynamic process which entails a concentrated effort from national law, but especially from the dynamic perspective offered by the legal procedures meant to contribute to the harmonization of laws in this area.

The practice of national courts is influenced by the solutions of the Justice Court of the UN, the Office for Harmonization in the Internal Market, the European Patent Office, as all these institutions have a priority right in creating unified practice in the process of enforcing law, in regard to the protection of intellectual property in close connection with creating open access to information for institutions, financing and research facilities, publishing houses, libraries as well as the researchers who work on international projects.

Thus, information becomes a common good, which brings upon a new challenge for the national lawmaker as an effect of the globalization of the European or international one; this challenge involves harmonizing procedures and legal means used to sanction those who violate this rights, be it patrimonial or non patrimonial, by defining the complex content of intellectual rights.

Some researchers have undergone analysis regarding the promotion of the result of their research by means of open access to information without neglecting the specific differences which exist between national laws in regard to intellectual rights. Thus, A.Swan and S.Brown point out, in one of their most recent research, the specific means by which the result of their research is promoted by means of direct access by identifying the following paths – pointing out the active means of open access to information through the internet, familiarizing the authors with these new means of spreading information, providing access to information by computer means and increasing the interest for identifying alternative sources which follow the visibility of the impact of science research[18].

These objective factors create, in the present stage, factors which would set up intellectual property rights in the dynamic process of harmonizing national laws with the institutional and legal institutions of the European Union, but also in the complex process of unifying provisions regulated by continental law and Anglo-Saxon law, within international organisms (for example OMPI) meant to protect rights which result from the extensive activity that defines intellectual creation seen as a non corporal property.

In this context, the lawmaker of the new Romanian Civil Code states, in article 2624, the laws which apply to works of international creation, thus referring to non corporal goods as follows – „The birth, content and extinction of copyrights over a work of intellectual creation are subject to the laws of the state where they were first brought to the attention of the general public, by publishing, representation, display or other adequate means. The secret works of intellectual creation are subject to the national laws of the author”[19].

This vision of the Romanian lawmaker enforces principles regulated by European laws, expressed in the procedure of harmonizing the protection of intellectual rights. As an example, we mention – EC Directive 2004/48 of April 29th, 2004 regarding the respect of intellectual property right; EC Directive 2001/29 regarding the harmonizing of certain aspects of copyright and the connecting rights in information society, but also solutions of the Justice Court of the European Union who managed to progressively restrict the national monopoly which was obvious in this area.

It was shown that within the dynamic process of creating the unique European market, these is another process which occurs, that of changing intellectual property right from a purely national right to a harmonized right, in connection with the principles of the European Union. (Times New Roman, 10, justify)

3. Conclusions

In conclusion, in the digital era, we are in the presence of an obvious process by which an incentive is created in order to valorize the existing works, with specific agreement from the authors.

The creator of a work has the power to authorize the use of the content of the work by those who are interested, thus waving a part or all the prerogatives of copyright, according to the principle of availability; this is possible both from a technical point of view as well as from a legal point of view, by awarding the appropriate license.

By creating licenses and especially free licenses which remove any restriction in using a work, a general interest is achieved in regard to harmonizing the principles by which the right of intellectual creation is protected, with free access to information, a sine qua-non condition for the overall progress of any society.

[17] Ibidem, *quoted works*, p. 86.
[18] Ibidem, *quoted works*, p. 20.
[19] See *the new Romanian Civil Code.*

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