



Copyright

in 27 jurisdictions worldwide

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Jonathan Reichman and James Rosini

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Romania

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Legislation and enforcement

1 What is the relevant legislation?

The main normative act is Law No. 8/1996 on Copyright and Neighbouring Rights, as further amended and supplemented (Romanian Copyright Law). The relevant legislation also includes:

- Government Ordinance No. 25/2006 for strengthening the administrative capacity of the Romanian Copyright Office, as republished;
- Government Decision No. 1086/2008 for setting out the fees for the operations performed by the Romanian Copyright Office and for the approval of the Methodological Norms on the level, the distribution and utilisation conditions of the incentives fund for the personnel of the Romanian Copyright Office;
- Government Decision No. 401/2006 on the organisation, operation, personnel structure and the infrastructure required for the performance of the attributions of the Romanian Copyright Office; and
- the decisions issued by the general manager of the Romanian Copyright Office regarding the collective management of copyright and neighbouring rights.

For the relevant international conventions to which Romania is party, please refer to the answer to question 45 below.

2 Who enforces it?

The copyright legislation is enforced by the courts of law (tribunals, courts of appeals and the High Court of Cassation and Justice) and the police (in case of minor or criminal offences). The Romanian Copyright Office and the collective management bodies also have attributions in this field.

In case of infringements, the right holders are entitled to request the competent authorities to acknowledge their rights and grant damages for the prejudice incurred.

Agency

3 Is there a centralised copyright agency? What does this agency do?

The Romanian Copyright Office (ORDA) is a specialised body subordinated to the Romanian government and is the competent authority in the field of copyright and neighbouring rights. Some of ORDA's main attributes include:

- regulating the activity in this field and drafting normative acts;
- administering the national registries and performing, upon request and subject to payment of fees, the registration of copyright and related rights in these registries;
- approving the establishment and supervising the functioning of collective management bodies, including the infliction of sanctions and keeping records of the repertoires transmitted by these bodies; and

- performing technical-scientific analyses regarding the originality of products incorporating copyright and related rights, and other expertises, upon request and with the payment of fees, etc.

Subject matter and scope of copyright

4 What types of works are copyrightable?

The literary, artistic or scientific works, as well as other intellectual creation works are copyrightable under Romanian law, if they are original. The law provides a non-exhaustive list of copyrightable works, as follows:

- literary and journalistic writings, lectures, sermons, pleadings, discourses and other works written or oral, and computer programs;
- scientific works, written or oral, such as communications, studies, university lectures, textbooks, projects and scientific documentation;
- musical works, with or without lyrics;
- dramatic, musical-dramatic and choreographic works and pantomime;
- cinematographic works and other audio-visual works;
- photographic works and other works made through a process similar to photography;
- works of graphic or plastic art, such as works of sculpture, painting, engraving, lithography, monumental art, stage design, tapestry, ceramics, glass and metal design, drawings, design and other works of applied art;
- works of architecture, including sketches, layouts and graphic works composing the architectural projects;
- maps and topographic, geographic and other scientific drawings.

Also copyrightable are derivative works that are created based on pre-existing works, namely:

- translations, adaptations, annotations, documentary works, musical arrangements and other transformations of a literary, artistic or scientific work, which are intellectual creations; and
- collections of literary, artistic or scientific works, such as encyclopaedias and anthologies, collections or compilations of materials or data, either protected or not, including databases, which, by reason of the selection or arrangement of their contents, constitute intellectual creations.

5 What types of rights are covered by copyright?

Copyright encompasses two categories of rights:

- Moral rights, namely:
 - (a) the right to decide if, how and when a work is brought to public knowledge;
 - (b) the right to claim recognition as author of the work;
 - (c) the right to decide the name under which the work is brought to public knowledge;

- (d) the right to claim the observance of the integrity of the work and to oppose any change or other interference with the work that damages the author's honour or reputation; and
- (e) the right to withdraw the work.

These rights cannot be waived or transferred. After the author's death, the rights under (a), (b) and (d) above are exercised by the heirs, for an unlimited period of time.

- Patrimonial rights, namely the right to reproduce, distribute the work, import in order to commercialise on the internal market copies of the work made with the author's consent, lease, lend, the work, communicate it to the public, directly or indirectly, including by making it available for the public to have access to it at any time and in any place, broadcast the work, transmit it by cable or create derivative works thereof. Also, the author of a graphic, plastic art or photographic work has a resale right, which entitles the author to receive a percentage of the price when the work makes the object of a reselling operation to which an art dealer participates as seller, buyer or agent.

6 What may not be protected by copyright?

The followings may not be protected by copyright:

- ideas, theories, concepts, scientific discoveries, procedures, operation methods or mathematical concepts, as such, and inventions, contained in a work, irrespective of the manner of adoption, writing, explanation or expression;
- political, legislative, administrative or judicial official texts and official translations thereof;
- official symbols of the state, public authorities and organisations, such as the coat of arms, seal, flag, emblem, blazon, badge and medal;
- means of payment;
- news and press information;
- simple facts and data; and
- photos of letters, documents, etc.

7 Do the doctrines of 'fair use' or 'fair dealing' exist?

There is no doctrine of 'fair use' or 'fair dealing', in general, but there are several legal limitations on copyright. For example, the Romanian Copyright Law provides the right to private copy, allowing the user to reproduce a work, without the author's consent, for personal use or for a normal family group, when the work has been previously disclosed to the public and the reproduction thereof is not contrary to the normal use of the work and does not prejudice the author or the right holder. In exchange, fair copyright levies are due for devices conceived in order to make copies and for supports on which sound or audio-visual recordings or graphic reproductions can be made.

Other examples of legal limitations include:

- the reproduction of a work in judicial, parliamentary or administrative proceedings, or for public safety purposes;
- the use of short quotations from a work for the purpose of analysis, commentary or illustration;
- the use of isolated articles or brief excerpts from works, in publications, in radio/television shows or in sound/audio-visual recordings, intended exclusively for teaching and education; and
- reproductions made by public libraries, educational institutions, museums or archives, which are not made in order to obtain a commercial or economic advantage, directly or indirectly, etc, all with the observance of the legal requirements.

Other legal limitations provided by the Romanian Copyright Law refer to the transformation of a work, which is allowed, without the author's consent and without payment of royalties, in the following cases:

- private transformation, which is not publicly available and is not intended for such purpose;
- where the result of the transformation is a parody or caricature, provided that the result does not create confusion concerning the original work and its author;
- the transformation is for the purpose of the exploitation of the work, exploitation that is permitted by the author; or
- the result of transformation is a summary presentation of works for teaching purposes, mentioning the author(s) of the original works.

8 What are the standards used in determining whether a particular use is fair?

The standards for determining whether a particular use is fair are provided by law, for each type of use permitted as limitation on copyright.

9 Are architectural works protected by copyright? How?

Architectural works are protected by copyright to the extent they are original. In case the owner of an original architectural work wants to destroy it, the author has the right to take pictures thereof and to receive the reproduction of the architectural projects.

There are also legal limitations of the exploitation rights over such works. Thus, in the case of architectural works placed permanently in public places, their image may be reproduced (without using means coming into direct contact with the works), distributed or communicated to the public, for non-commercial purposes, without the author's consent and free of charge, on condition that the image of the work is not the main subject of the reproduction, distribution or public communication. Also, such use must be compliant with fair practices, must not be contrary to the normal exploitation of the work and must not prejudice the author or right holders.

10 Are performance rights covered by copyright? How?

Performance rights enjoy protection as neighbouring rights. Performers are granted:

- Moral rights, namely:
 - the right to the paternity of the performance;
 - the right to claim that his name/pseudonym be indicated or communicated in each show and each utilisation of the recording thereof; and
 - the right to claim the observance of the quality of the performance and to oppose to any substantial change or any infringement of his rights, that would damage the performer's honour or reputation.
- Patrimonial rights, namely the right of fixation of the performance, the right to reproduce, distribute, lease or lend the fixed performance, the right to import in order to commercialise on the internal market the fixed performance, the right of broadcasting and public communication, unless the performance has been already fixed or broadcasted with the performer's permission, in which case the performer is only entitled to a fair remuneration, the right to make the fixed performance available for the public to have access to it at any time and in any place, and the right to transmit the fixed performance by cable.

11 Are other 'neighbouring rights' recognised? How?

Without prejudice to copyright holders, the neighbouring rights are recognised in favour of performers, producers of phonograms and audio-visual recordings and radio and television broadcasters for their own shows and programs, without such being construed as a limitation to authors' rights. The neighbouring rights confer to their holders prerogatives similar to author's rights.

In addition to the neighbouring rights, the Romanian Copyright Law also recognises a sui generis right in favour of the makers of databases.

12 Are moral rights recognised?

Yes. Please refer to the answer to question 5 above. Also, for performers' moral rights, please refer to the answer to question 10 above.

Copyright formalities

13 Is there a requirement of copyright notice?

There is no requirement for a copyright notice in order to obtain copyright protection, as original works are automatically protected by copyright as of their creation.

However, the author and other copyright holders are entitled to place on their works a copyright notice consisting of the letter C in a circle, together with their name and the place and year of the first publication. In case such a copyright notice is displayed, there is a presumption that the work is copyright protected in favour of the person using the copyright notice, until otherwise proven.

14 What are the consequences for failure to display a copyright notice?

There are no consequences, except that the presumption mentioned above under the answer to question 13 shall not apply.

15 Is there a requirement of copyright deposit?

There is no deposit requirement in order to obtain copyright protection.

16 What are the consequences for failure to make a copyright deposit?

There are no consequences for failure to make a copyright deposit.

17 Is there a system for copyright registration?

Copyrighted works may be registered in the National Works Registry administrated by ORDA.

18 Is copyright registration mandatory?

Copyright registration is not mandatory. However, the registration of a work in the National Works Registry may be used as means of evidence.

19 How do you apply for a copyright registration?

The applicant must fill-in a standard application form and must file it with ORDA in two counterparts, together with a copy of the work (in electronic or printed format) and the proof of payment of the applicable fee.

20 What are the fees to apply for a copyright registration?

The fee to apply for a copyright registration is of approximately €25 /work. The applicant may choose to pay an additional emergency fee of approximately €75.

21 What are the consequences for failure to register a copyrighted work?

There are no consequences for failure to register a copyrighted work.

Ownership and transfer

22 Who is the owner of a copyrighted work?

As a rule, the owner of the copyrighted work is the author (or, in case of collaboration – the co-authors). However, in case of collective work, unless otherwise agreed, the patrimonial rights belong to the person that had the initiative and under whose name the work has been created. Also, in case of software created by employees, the patrimonial rights belong to the employer.

23 May an employer own a copyrighted work made by an employee?

Yes. While for software, the patrimonial rights belong to the employer by virtue of the employment relationship, for other types of works, the fact that the patrimonial rights belong to the employer must be agreed, in writing, by the parties.

24 May a hiring party own a copyrighted work made by an independent contractor?

Yes. However, the fact that the patrimonial rights belong to the hiring party must be agreed by the parties. The legislation provides that the existence and content of such agreement may only be proved by written document (except for contracts having as object works used in the media).

25 May a copyrighted work be co-owned?

Yes, a copyrighted work may be co-owned either as collective or as a joint work.

26 May rights be transferred?

Yes, except for moral rights.

27 May rights be licensed?

Yes, except for moral rights.

28 Are there compulsory licences? What are they?

While the legislation does not expressly refer to compulsory licences, in some cases, copyrighted works can be freely used without the author's permission, and, under certain circumstances, subject to payment of certain royalty to the right holders. For details, please refer to the answer to question 7 above.

29 Are licences administered by performing rights societies? How?

Holders of copyright or neighbouring rights may exercise their rights either directly or by mandate granted to the collective management bodies. For certain rights (eg, private copy, resale right, cable retransmission, radio transmission of musical plays), collective management is mandatory.

30 Is there any provision for the termination of transfers of rights?

There are no specific and compulsory provisions for the termination of transfers of rights. General principles of the Civil Code apply.

31 Can documents evidencing transfers and other transactions be recorded with a government agency?

No government agency has the competency to evidence transfers or other transactions with respect to patrimonial rights.

Duration of copyright

32 When does copyright protection begin?

Copyright protection begins as of the moment of creation of the work.

33 How long does copyright protection last?

As a general rule, the patrimonial rights last during the entire life of the author and after his death such are transmitted by inheritance, in accordance with the civil law provisions, for a period of 70 years.

Concerning joint works, the duration of the patrimonial rights is of 70 days as of the death of the last co-author. Where the contributions of the co-authors are distinct, the duration of the patrimonial rights for each of them is of 70 years as of the death of each co-author.

In the case of works brought to public attention anonymously or under a pseudonym, the protection lasts for 70 years as of the date such were brought to public attention. If the identity of the author is brought to the public attention before the expiry of the 70 years term or the pseudonym does not leave any doubt as to the identity of the author, the general rule mentioned in the first paragraph herein above applies.

The above-mentioned terms are calculated starting with 1 January of the following year of the author's death or the date the work is brought to public attention, as the case may be.

Neighbouring rights last for 50 years from the date of the interpretation/execution (in case of performers' rights) or the first fixation of the work (in case of producers' rights). In case the fixation of the interpretation/execution of a performer or of the work of a producer is the object of a licit publication or of a licit public communication, the duration of the rights is of 50 years from the date one of these events occur. The duration of rights is calculated as of 1 January of the following year of the event that has caused the rights.

The rights of a database creator are of 15 years, starting with 1 January of the year following the completion of the database.

34 Does copyright duration depend on when a particular work was created or published?

Please refer to the answer to question 33.

35 Do terms of copyright have to be renewed? How?

No.

Copyright infringement and remedies

36 What constitutes copyright infringement?

Any exploitation of a work without the consent of the titleholder of rights over such work represents a copyright infringement, on condition that such exploitation does fall within the scope of the exceptions provided by the Romanian Copyright Law.

37 Does secondary liability exist for indirect copyright infringement? What actions incur such liability?

As a general rule, in case the conditions of the criminal/civil liability are met in relation to the acts of a person, the liability of such is triggered.

38 What remedies are available against a copyright infringer?

Copyright infringement may trigger criminal, civil or administrative liability. Preliminary injunctions and/or precautionary measures may be granted by the competent courts, upon the titleholder's request. Also, the titleholder may request to the competent authorities the

Update and trends

During the past years, initiatives for amending the copyright law in Romania have been presented to the Parliament. As the last such initiative was rejected in March 2010 by the Deputies Chamber, it is likely that an amended draft law shall be promoted in the coming months.

seizure of the goods suspected of infringing its rights.

39 Is there a time limit for seeking remedies?

For civil claims, the general statute of limitation of three years applies.

40 Are monetary damages available for copyright infringement?

Yes.

41 Can attorneys' fees and costs be claimed in an action for copyright infringement?

Yes.

42 Are there criminal copyright provisions? What are they?

Yes. The Romanian Copyright Law provides different criminal sanctions for copyright infringement acts, namely criminal fines or imprisonment.

43 Are there any specific liabilities, remedies or defences for online copyright infringement?

The Romanian Copyright Law does not provide for any specific liabilities, remedies or defences for online copyright infringement, as towards offline infringement.

44 How may copyright infringement be prevented?

Copyright infringement may be prevented or at least limited by means of technical protection measures (DMR). As a preventive measure, the titleholders may provide to users in any format information about their statute of rights, including the permitted modalities and conditions of use of the respective work.

Relationship to foreign rights

45 Which international copyright conventions does your country belong to?

- The Berne Convention for the Protection of Literary and Artistic Works of 1886;
- The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 1961;
- The Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms of 1971;
- The 1994 TRIPs Agreement (Trade-Related Aspects of Intellectual Property Rights); and
- The WIPO Treaties of 1996 (Copyright Treaty and Performances and Phonograms Treaty).

Romania is also bound by European directives regarding intellectual property incorporated into Romanian law.

46 What obligations are imposed by your country's membership of international copyright conventions?

Based on the provisions of the international conventions, Romania must grant the same rights to authors from other countries (also members to such conventions) as to its nationals (lacking such conventions, foreign citizens enjoy the rights granted to Romanian nationals on the condition of reciprocity).

European directives must be incorporated into Romanian law within a certain period (generally two years).



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