

# Copyright

in 26 jurisdictions worldwide

# 2013

Contributing editors: Andrew H Bart, Steven R Englund,  
Susan J Kohlmann and Carletta F Higginson



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# Romania

Ana-Maria Baciú and Delia Belciu

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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 (the Romanian Copyright Law). The relevant legislation also includes:

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

For the relevant international conventions to which Romania is party, please refer to question 48.

### 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 cases of minor or criminal offences). ORDA and the collective management bodies also have attributions in this field.

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

### 3 Are there any specific provisions of your copyright laws that address the digital exploitation of works? Are there separate statutory provisions that do so? If so, please describe them.

No specific legal provisions – either in the Copyright Law or in any other legal deed – address the digital exploitation of works. The only provisions that are relevant for such exploitation of works are included in one decision of ORDA related to remuneration due to the holders of economic copyright regarding music works for the reproduction or public communication (or both) of music works through online and mobile services (ie, Decision No. 180/2010 issued by ORDA regarding the publication in the Official Gazette of Romania, Part I, of the arbitral decision of 30 March 2010, having as its object the final form of the methodology for determining the remuneration due to the holders of economic copyright regarding music works for the reproduction or public communication (or both) of music works through online and mobile services, published in Official Gazette No. 273 on 27 April 2010; as further amended by

the Decision No. 114A of 5 April 2011 issued by the Bucharest Court of Appeals, published in Official Gazette No. 420 of 16 June 2011, according to Decision No. 204/2011 of ORDA – the Methodology).

According to the Methodology, public communication of music works on the Romanian territory, either together with images or not, through an online service (streaming), can be made only under a non-exclusive licence concluded with UCMR-ADA, which is the collective management body for music works. The non-exclusive licence is granted for a period of three years (or less, if so expressly requested by the user), and grants to the user the right for public communication of music works on the Romanian territory.

The Methodology defines the user as any natural or legal person offering to the public informational society services that contain music works available on an online or mobile information system. Further, the Methodology provides that the following are to be considered as a user:

- any person under whose name is registered the domain name where the service is available through the internet or other networks, wired or wireless;
- any person who is responsible for the content of the website available on the internet or other networks, wired or wireless;
- any person who exploits the website over the internet or through other networks, wired or wireless; or
- any person who obtains revenue from advertising, from downloading or listening of music works, or under any other form, as a result of the supply of the services comprising music works through the internet or other networks, wired or wireless.

The Methodology does not provide a definition for ‘public communication on the Romanian territory’ in cases of communication over the internet.

Our interpretation is that UCMR-ADA should only address domain names under the country code top-level domain ‘.ro’, irrespective of whether the user responsible for obtaining the non-exclusive licence authorisation and paying the fee is a Romanian natural or legal person or not. However, such interpretation has not yet been, either officially or unofficially, confirmed by UCMR-ADA.

Unlike streaming, for download UCMR-ADA may only conclude non-exclusive licence authorisations with respect to the music works that are part of the repertoire managed on an optional basis (ie, upon agreement with the holder of the rights) by UCMR-ADA. In cases of music works that are not under the management of UCMR-ADA, the right to reproduce such music works (ie, the right to download) must be obtained directly from the copyright owner over each such work.

No legal deed expressly addresses the remuneration to be paid to phonogram and videogram producers, or to performing artists, for the digital public communication or reproduction of their work. As a consequence, for obtaining such right, it is necessary to request individual express and independent authorisation from the producer of each respective phonogram or videogram, as well as from each performing artist.

In addition, no legal deed currently addresses the digital exploitation of other types of works.

- 4 Do your copyright laws have extraterritorial application to deal with foreign-owned or foreign-operated websites that infringe copyright?

Romanian legislation contains no express provisions in relation to extraterritorial application, ie, in relation to foreign-owned or foreign-operated websites that infringe copyright.

#### Agency

- 5 Is there a centralised copyright agency? What does this agency do?

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;
- administrating 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

- 6 What types of works are copyrightable?

Literary, artistic and 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; and
- maps and topographic, geographic and other scientific drawings.

Derivative works that are created based on pre-existing works are also copyrightable, 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 that, by reason of the selection or arrangement of their contents, constitute intellectual creations.

- 7 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 and distribute the work;
  - import in order to commercialise on the internal market copies of the work made with the author's consent;
  - lease or lend the work;
  - communicate it to the public, directly or indirectly, including by making it available for the public to have access to at any time and in any place; and
  - broadcast the work, transmit it by cable or create derivative works thereof.

In addition, the author of a graphic, plastic art or photographic work has a resale right, which entitles him or her to receive a percentage of the price when the work makes the object of a reselling operation in which an art dealer participates as seller, buyer or agent.

- 8 What may not be protected by copyright?

The following 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.

- 9 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 rightholder. 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 or television shows, or in sound or audio-visual recordings, intended exclusively for teaching and education; and
- reproductions made by public libraries, educational institutions, museums or archives that 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.

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**10** 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.

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**11** Are architectural works protected by copyright? How?

Architectural works are protected by copyright to the extent they are original. In the event that 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. In addition, 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 rightholders.

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**12** 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 or her name or 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 or her rights, that would damage the performer's honour or reputation; and
- 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 the fixed performance on the internal market;
- the right of broadcasting and public communication, unless the performance has been already fixed or broadcast 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.

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**13** 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.

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**14** Are moral rights recognised?

Yes. Please refer to question 7. In addition, for performers' moral rights, please refer to question 12.

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### Copyright formalities

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**15** 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 cases where 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.

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

There are no consequences, except that the presumption mentioned above in question 15 shall not apply.

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**17** Is there a requirement of copyright deposit?

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

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

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

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**19** Is there a system for copyright registration?

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

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**20** 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.

**21** 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.

**22** What are the fees to apply for a copyright registration?

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

**23** 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****24** Who is the owner of a copyrighted work?

As a rule, the owner of the copyrighted work is the author (or, in cases of collaboration, the co-authors). However, in cases 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. In addition, in cases of software created by employees, the patrimonial rights belong to the employer.

**25** 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.

**26** 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 their object works used in the media).

**27** May a copyrighted work be co-owned?

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

**28** May rights be transferred?

Yes, except for moral rights.

**29** May rights be licensed?

Yes, except for moral rights.

**30** 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 question 9.

**31** 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.

**32** 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.

**33** 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****34** When does copyright protection begin?

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

**35** How long does copyright protection last?

As a general rule, patrimonial rights last during the entire life of the author, and after his or her 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 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 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 applies.

The above-mentioned terms are calculated starting on 1 January of the year following 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 or execution (in the case of performers' rights) or the first fixation of the work (in the case of producers' rights). In cases where the fixation of the interpretation or 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 from 1 January of the following year of the event that has caused the rights.

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

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

Please refer to question 35.

**37** Do terms of copyright have to be renewed? How?

No.

**Update and trends**

There is currently a project for the amendment of Law No. 8/1996 on Copyright and Neighbouring Rights adopted by the Senate that is under discussions by the committees from the Chamber of Deputies.

- 38** Has your jurisdiction extended the term of copyright protection?  
No. The terms applicable are the ones detailed in question 35.

**Copyright infringement and remedies**

- 39** 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.

- 40** Does secondary liability exist for indirect copyright infringement? What actions incur such liability?

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

- 41** What remedies are available against a copyright infringer?

Copyright infringement may trigger criminal, civil or administrative liability. Preliminary injunctions or precautionary measures, or both, may be granted by the competent courts, upon the titleholder's request. In addition, the titleholder may request to the competent authorities the seizure of the goods suspected of infringing its rights.

- 42** Is there a time limit for seeking remedies?

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

- 43** Are monetary damages available for copyright infringement?

Yes.

- 44** Can attorneys' fees and costs be claimed in an action for copyright infringement?

Yes.

- 45** 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.

- 46** 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.

- 47** 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**

- 48** 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 Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement); 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.



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

Based on the provisions of 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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