

Copyright Limitations and Exceptions for Visually Impaired Persons and Protection of Audiovisual Performances in Romania

Regarded as guarantees for the establishment of a fair balance between protection and access to culture and knowledge, Romania has transposed within the national legislations the related provisions in the field of limitations and exceptions set out both by international treaties where Romania is party and EU acquis, taking into account since 2007 our country is a Member State of that entity. From the acquis point of view, most important and relevant on the topic is Directive 2001/29/EC (Information Society (INFOSOC) Directive), listing within Article 5 a number of limitations and exceptions.

The Romanian framework law on copyright and related rights, Law no. 8/1996 with its subsequent modifications and completions, establishes provisions in terms of limitations and exceptions within Articles 33 to 38.

It is also transposed the fundamental principle in the field, namely the 3 Step Test as provided in Article 9(2) Berne Convention, Article 13 TRIPS Agreement, Articles 10(2) WCT and 16(2) WPPT as well as Article 5(5) of INFOSOC Directive, emphasizing that limitations and exceptions apply to certain special cases, do not conflict with normal exploitation of the work and do not unreasonably prejudice the legitimate interests of rightsholders. All these legal instruments have been ratified by Romania but the 3 Step Test is also consecrated by Article 13 (2) of the Beijing Treaty on Audiovisual Performances and Article 11 of the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or Print Disabled, both these treaties have not been ratified by Romania yet.

In terms of limitations and exceptions for visually impaired persons, the Romanian copyright law does not provide anything, bearing in mind our country has just signed the Final Act of the Marrakech Conference and has not signed or ratified the treaty yet.

However, subject to the 3 Step Test our national legislation in the field provides an exception for the reproduction, distribution, broadcasting or communication to the public, with neither direct nor indirect commercial or economic advantage of works, for the benefit of people with disabilities, which are directly related to that disability and to the extent required by the specific disability (Article 33(2) e).

In addition, the source, including the author's name, has to be indicated, unless this turns out to be impossible; in case of works of plastic art, photographic or architecture works the place in which the original is to be found has to be indicated, too.

Regarding the protection of audio-visual performances, Romania has signed in 2013 in Geneva the Beijing Treaty on Audiovisual Performances.

Although Romania has not ratified yet this Treaty, it has to be highlighted that most of its provisions may be found within our national legislation.

It should be emphasized Romania supports the performers' cause, as a less-favored group, in a difficult financial situation due to their profession, and our country, within various meetings always reiterates the necessity of an adequate protection for all categories of performers, including the audiovisual ones.

At EU level, Romania has always advocated that the difference of duration of protection between the performers from audiovisual field which is 50 years and the one of performers from musical field which is 70 years, should be harmonised while it can generate a significant unbalance and can have a negative impact on performers.

Nevertheless, the Romanian copyright framework law features a large array of regulations on the protection of audiovisual performers rights, the great majority of provisions set by Beijing Treaty being already encountered within Law no. 8/1996.

In this regard, Article 95 defines performers as actors, singers, musicians, dancers and other persons who present, sing, dance, recite, declaim, act, interpret, direct, conduct or in any other way execute a literary or artistic work, a performance of any kind, including performances of folklore, variety or circus performances or puppet shows. Article 96 establishes the moral rights of performers, respectively the right to demand recognition of the authorship of his own performance; the right to demand that his name or pseudonym be mentioned or communicated at each performance and on each use or a recording thereof; and the right to demand respect for the quality of his rendering and to oppose any distortion, falsification or other substantial modification of his performance or any infringement of his rights that might seriously prejudice his honor or reputation. These moral rights may not be the subject of renunciation or alienation and after the performer's death, the exercise of the rights shall be transferred by inheritance, for an unlimited period of time. If there are no heirs, the exercise of the said rights shall revert to the collective management organization that has managed the performer's rights or, as the case may be, to the organization having the largest membership, in the concerned field.

Concerning the economic rights, in Romania performers have the exclusive right to authorize or prohibit the fixation of his performance; the reproduction of the interpretation of the fixed performance; the distribution, rental, lending, import, making available to the public and cable retransmission of the fixed performance as well as the broadcasting or communication to the public of his interpretation or performance, except the case when the interpretation or performance has already been fixed or broadcasted, situation when he/she is entitled to an equitable remuneration only.

Likewise, Law no. 8/1996 stipulates the performance of a work is collective when the individual performances form a whole, without being possible, given the nature of performance, for a distinct right to be attributed to any of the participating artists on the ensemble of the performance. In addition, with a view to exercising the exclusive rights on the authorization, performers collectively participating in the same performance, such as members of a musical group, choir, orchestra or ballet, or theatre company shall authorize, in writing, a representative from among themselves, subject to approval of the majority of the members.

Article 100 of the same Law provides that in the case of a performance given by the performer under an individual contract of employment, the economic right may be transferred to the employer on condition that the transfer is expressly mentioned in the individual contract of employment.

Moreover, in Article 101 it is clearly stressed that unless otherwise provided, the performer who has taken part in the making of an audiovisual work, of an audiovisual recording or of a sound recording, shall be presumed to have assigned to the producer thereof, for an equitable remuneration, the exclusive right to use his performance thus fixed, by reproduction, distribution, import, rental and lending.

As previously indicated, the duration of the patrimonial rights of audiovisual performers stipulated by the Romanian copyright law is 50 years as from the date of performance. However, if the fixation of the performance throughout such duration makes the object of a lawful publishing or lawful communication to the public, the duration of the rights shall be of 50 years as from the date when whichever of them has taken place for the first time. The duration is calculated as from the 1st of January of the year following the fact generating rights.