

## **Adapting the National and Union Rules on Copyright in the Digital Era<sup>1</sup>**

*Amelia SINGH (GHEOCULESCU)<sup>2</sup>*

### **Abstract**

*Copyright protects the expression of an idea, not the idea itself. The relationship between freedom of creation and copyright has always been complicated, and the current situation of copyright requires that it be re-established as an institution, in order to respond to new challenges.*

*As a result of the evolution of the technique, the introduction and development of new media, information and new communications technologies, there have been constant changes to copyright laws.*

*At the internal level, the last changes made in this field can be found in Law no. 15/2019 for amending and supplementing Law no. 8/1996 on copyright and related rights. Also at the level of the European Union, new provisions on copyright and related rights have been adopted, Directive no. 2019/790, which will be implemented in the national laws of the Member States of the European Union up to the specified deadlines.*

**Keywords:** *Private Law, Intellectual Property Law, Copyright, Digital Era*

### **Introduction**

Copyright, as an institution, was regulated - for the first time in Romania - during Cuza's reign by the Law of the Press (1862), which recognized the creators the right to reproduce, sell and surrender their works. By this law, the right to transmit the exploitation of the work by inheritance was realized for a period of 10 years from the death of the author. Subsequently, in 1923 a special law dedicated to copyright, the Law of literary and artistic property, which sets the date of the work in the public domain 30 years after the author's death, comes into force. In 1956 the Decree no. 321 regarding the copyright, which repealed the previous legislation, establishing terms of use of the patrimonial rights<sup>3</sup>. The

---

<sup>1</sup> The article was prepared for the International Law Conference, "Current Issues within EU and EU Member States: Converging and Diverging Legal Trends", 3rd edition, organized by the Faculty of Law - Transilvania University of Braşov on the 29<sup>th</sup>-30<sup>th</sup> of November 2019. All links were last accessed on 22 November 2019.

<sup>2</sup> Senior Lecturer, Ph.D - University of Pitesti, email: singh.amelia@yahoo.com.

<sup>3</sup> Published in the Official Bulletin no. 18 from June 27<sup>th</sup>, 1956.

regulations of this decree were applicable until 1996, when the Law no. 8 on copyright and related rights was adopted.

Currently, all these provisions are applicable, the law being republished in 2018<sup>4</sup>. The terms of copyright protection are regulated in accordance with European Union law, and a number of directives in this matter have been transposed into our legislation.<sup>5</sup>

Currently in the area of copyright is also EU Directive no. 2019/790 of the European Parliament and of the Council regarding copyright and related rights in the digital single market and amending Directives no. 96/9 / EC and no. 2001/29 / EC, as well as consequence of the evolution of the society in which we live and the technique, in this moment it is not being transposed internally, given its recent adoption by the EP and the EC.

### 1. The concept of Copyright

Copyright on a literary, artistic or scientific work, as well as on other works of intellectual creation is recognized and guaranteed, internally, under the conditions of Law no. 8/1996. This right is related to the person of the author and has moral and patrimonial attributes.

Although no definition of copyright is given in the law, the Romanian doctrine defined the institution of copyright as the instrument of protection of the creators and their works<sup>6</sup> or the whole of the legal norms that regulate the social relations that arise from the creation, publication and exploitation of the literary, artistic or scientific works. Dr. Stanciu D. Cărpenaru defines, in his university course, the copyright as social relations arising from the creation and exploitation of scientific, literary or artistic works<sup>7</sup>. What can be observed between the two definitions is that the first one concerns both the creation and publication, but also the use of works, and the second refers only to the creation

---

<sup>4</sup> Published in the Official Gazette of Romania, Part I, no. 489 of June 14, 2018.

<sup>5</sup> Example: Directive of the European Parliament and of the Council no. 96/9 / EC regarding the legal protection of databases, Directive of the European Parliament and of the Council no. 2001/29 / EC regarding the harmonization of certain aspects of copyright and related rights in the information society, Directive no. 2012 / 28 / EU to the European Parliament and the Council regarding certain permitted uses of orphan works, Directive no. 2014/26 / EU of the European Parliament and of the Council regarding the collective management of copyright and related rights and the granting of multi-territorial licenses for musical works rights for online use in the internal market, Directive no. 2017/1564 / EU to the European Parliament and the Council regarding certain permitted uses of certain works and other objects of copyright protection and related rights for the benefit of the blind, visually impaired or visually impaired reading of printed materials and amending Directive no. 2001/29 / EC on the harmonization of certain aspects of copyright and related rights.

<sup>6</sup> V. Roş, *Intellectual Property Law, Bucharest: Global Lex, 2001, p.49.*

<sup>7</sup> St.D. Cărpenaru, *Civil Law. Intellectual creation rights*, University of Bucharest, 1971, p.7.

and use of works. So the difference lies in paying attention to the publication of the works, a process necessary to bring them to the public's notice.

In Romanian doctrine, the copyright is recognized to the person or individuals who have performed an original work of intellectual creation in the literary, artistic or scientific field, whatever the method of creation, the method or concrete form of expression and independent of their value and purpose, or other legal holders, natural or legal persons.

Creativity is the natural pursuit of originality, said Edward Wilson, emeritus research professor at Pellegrino University. Humanity is pushed forward the instinctive love of novelty<sup>8</sup>. Creativity is thus the common criterion that determines the granting of legal protection in the field of technical creations and copyright, because it individualizes a person's ability to design and invent something new<sup>9</sup>, thus creating the work independently and expressing the idea<sup>10</sup> in an original way<sup>11</sup>.

Originality is considered to be an essential attribute, the only condition for the protection of intellectual creation in the literary, artistic or scientific field<sup>12</sup>. But in the specialty literature, the notion of originality has been understood differently, some authors considering that it involves minimal intellectual effort, while others consider that the work bears the impress of the author's personality<sup>13</sup>. This can be manifested both in the form of expression and in "the elements of fantasy, choice, material selection or mental processing"<sup>14</sup>.

But, as stated in English doctrine, copyright protects the expression of an idea, not the idea itself<sup>15</sup>.

The relationship between freedom of creation and copyright has always been complicated, and the current situation of copyright requires that it be re-established as an institution in order to respond to new challenges.<sup>16</sup>

---

<sup>8</sup> *The Origins of Creativity*, Epublising House Liveright, 2017, p.11.

<sup>9</sup> N.R. Dominte, *Some considerations regarding the civilization of copyright and creativity*, Romanian Journal of Intellectual Property Law no. 2/2019, p. 62.

<sup>10</sup> C. Nenu, *Individual employment contract*, Bucharest: C.H. Beck, 2014, p. 221.

<sup>11</sup> K. Idris, *Intellectual property, a powerful tool for economic development*, Bucharest: Publishing House OSIM, p. 158.

<sup>12</sup> C.R. Romițan, *Conditions required for the protection of works under copyright*, p. 87 available on <http://drept.ucv.ro/RSJ/images/articole/2007/RSJ1/A10RomitanCiprian.pdf>.

<sup>13</sup> See widely the supporters of these opinions in C.R. Romițan, *Conditions required for the protection of works under copyright*, p. 87.

<sup>14</sup> Y. Eminescu, *Copyright*, Bucharest: Lumina lex, 1997, p. 77.

<sup>15</sup> T.Hart, L. Fazzani și S. Clark, *Intellectual Property Law*, Macmillan – Law matters, London: Red Globe Press, 2013, p. 161.

<sup>16</sup> Gh. Gheorghiu, *Freedom of creation and moral law as author*, Romanian Journal of Intellectual Property Law no. 3/2018, p. 7.

As a result of the evolution of the technique, the introduction and development of new media, information and new communications technologies, there have been constant changes to copyright laws.

At the internal level, the last changes made in this field can be found in Law no. 15/2019<sup>17</sup> for amending and supplementing Law no. 8/1996 regarding copyright and related rights.

Two new articles have been introduced which stipulate that, without the consent of the owner of any copyright or any related law and without payment of any remuneration, the reproduction, distribution, communication to the public, making available to the public, broadcasting, renting and lending of a work or other protected object, provided that they do not contravene the normal exploitation of the work and do not prejudice the author or the holders of the rights, for the purpose, by a beneficiary or a person acting on its behalf, of a copy in accessible format of a work or other object protected by copyright or related rights, to which the beneficiary has legal access, for the exclusive use of the beneficiary; also, for the purpose of obtaining, by an authorized entity, a copy in accessible format of a work or other object protected by copyright or related rights, to which the beneficiary has legal access or public communication, placing at the disposal, the distribution or the loan, without profit purpose, of a copy in accessible format to a beneficiary person or another entity authorized for the purpose of exclusive use by a beneficiary person.

The beneficiary person, in the legislator's view, is a person who is blind or has visual impairments that cannot be corrected to obtain a visual function equivalent, essentially, to that of a person without such deficiencies and who, as a result, does not can read works printed to the same extent, essentially, as a person who is not affected by such a deficiency; also, it can be the person who has a perception disability or reading difficulties and, consequently, cannot read works printed to the same extent, essentially, as a person who does not suffer from such a disability. At the same time, the beneficiary person may also be the person suffering from a physical disability that prevents them from holding or manipulating a book or focusing their eyes or moving their eyes to a degree that would be commonly acceptable for reading.

Also at the level of the European Union, new provisions on copyright and related rights have been adopted, which will be implemented in the national laws of the Member States of the European Union up to the specified deadlines.

## **2. Changes to European copyright directives in order to adapt to the digital era**

*Directive no. 2016/0280 regarding copyright in the digital single market<sup>18</sup> has been approved, in the European Parliament, after long discussions and controversies existing*

---

<sup>17</sup> Published in the Official Gazette of Romania, Part I no. 33 of January 11, 2019.

<sup>18</sup> Journal Officiel de l'Union Européenne, L 280, Octobre 31, 2019.

on the basis of the proposals for the adoption of this Directive. Controversies stem from the fact that a number of issues could arise, including for ordinary Internet users. They may no longer be able to refer to news sources that include parts of articles or may no longer be able to upload content legally, to sites such as YouTube or Facebook, due to technical limitations that will need to be implemented as a result of obligations of the directive. It contains a number of provisions that could seriously affect the functioning of the sites and content posted there, as well as the possibility of the press and smaller publications to gain exposure.

This is a series of articles, within the draft directive in question, which could lead to such results: Articles 3, 11 (become Article 15) and 13 (become Article 17).

Article 3 refers to the fact that texts and data from databases can be extracted and reproduced, exceptionally, without the permission of the copyright holders or rights in respect of the respective databases, if this is done by the institutes research. Extraction and reproduction must also be done for research purposes.

The problem with this provision is that it affects innovation, according to an article published on the Public Knowledge blog<sup>19</sup>. Due to the fact that the exception is limited to research institutes that carry out research activities, other persons who would extract texts and data from databases, for commercial purposes, for example, could be affected, being forbidden such uses.

There have been problems also with Article 11 (current Article 15)<sup>20</sup>. It provides for the protection of press releases, which cannot be reproduced without the consent of the copyright holders, except for very short excerpts from the press articles or references to these articles, via hyperlinks.

Ordinary users could be affected from two different perspectives: on the one hand, Article 11 (15) contains no exceptions other than those mentioned above. Thus, a user could end up making a reference to a news source, in a post on a social site. Because he includes in his post, in addition to the link, also fragments that go beyond the limits mentioned above, he could violate that article. In such a case, in order to post more than is allowed, you should have a license from the person who wrote the article or publication.

On the other hand, there is also a problem related to the access of users to information sources<sup>21</sup>, with the possibility that certain platforms that refer to news articles may restrict the information they show to users. This could affect both users and small publications, which are based on platform exposure. Also, it seems that giving up displaying excerpts from news articles, by platforms promoting such articles, could decrease access to news articles.

---

<sup>19</sup> <https://www.publicknowledge.org/>, accessed at November 24th, 2019.

<sup>20</sup> <https://www.marketingportal.ro/articole/stiri-81/directiva-europeana-privind-drepturile-de-autor-din-nou-la-dezbateri-10585.html>.

<sup>21</sup> N. Sfetcu, *Intellectual Property, the European Union*, can be found at <https://www.setthings.com/ro/directiva-ue-privind-dreptul-de-autor-pe-piata-unica-digitala>.

However, there are also issues with Article 13 (the current Article 17), which provides that platforms on which content promoted or created by users of the platform appears, must take certain measures, including technical ones, to protect the copyright holders of content that could affect such rights. This would mean the use of upload filters, and the existence of such measures could severely affect users of some platforms. The risk that technical measures, such as upload filters, also affect users who use legal content is extremely high. Therefore, because of such measures, the effects could extend beyond what was intended.

Although the directive seemed to provide for additional benefits for copyright holders, the vague language and overtightening of exceptions could create more disadvantages than benefits, affecting the end user.

But in 2018, negotiations on the copyright provisions have begun. Andrus Ansip, Vice President of the European Commission, said that *Europeans deserve a copyright law that is appropriate for the digital era: it is good for creators, platforms and ordinary internet users*<sup>22</sup>.

Following the long negotiations and during the Romanian Presidency, the EU Directive no. 2019/790 of the European Parliament and of the Council on copyright and related rights was adopted in the digital single market<sup>23</sup>.

In a joint statement, the Vice President for the Digital Single Market, Andrus Ansip, Commissioner for Internal Market, Industry, Entrepreneurship and SMEs, Elzbieta Bienkowska, and Commissioner for Digital Economy and Digital Society, Mariya Gabriel, welcomed the result of the vote which shows that it is the first regulation in the world that addresses the challenges of business relations within the economy of online platforms, representing an important stage of the digital single market that lays the foundations for future developments. They says their rulings will not only improve confidence, predictability and legal certainty, but will also provide new and accessible options in terms of remedial measures and dispute resolution between businesses and platforms.<sup>24</sup> At the same time, the Copyright Directive protects freedom of expression, a fundamental value of the European Union, and establishes solid guarantees for users, stressing that the use of existing works for the purpose of citation, criticism, review, caricature and parody is explicitly allowed in the whole of Europe; it protects creativity in the digital era, ensures broader access to content for EU citizens, as well as new guarantees for the full protection of their freedom of expression in the online environment.<sup>25</sup>

<sup>22</sup> <https://www.marketingportal.ro/articole/stiri-81/directiva-europeana-privind-drepturile-de-autor-din-nou-la-dezbateri-10585.html>.

<sup>23</sup> <https://eur-lex.europa.eu/eli/dir/2019/790/oj>.

<sup>24</sup> <https://www.finzoom.ro/articole/comunicat-presa/piata-unica-digitala~053ab5af-050c-471d-8134-30013a93c80e/>.

<sup>25</sup> <https://www.portal-resurseumane.ro/companii-si-industrii-163/directiva-privind-drepturile-de-autor-ce-beneficii-adeuce-aceasta-celor-care-lucreaza-in-domeniu-15935.html>.

*Although there have been numerous controversies regarding the provisions of the Copyright Directive from 2016, from which the negotiations started, the need to adopt regulations in this regard was imposed, given that the last provisions in this field were from 2001, when there were no social networks, video programs, online courses. The reasons that led to the adoption of Directive no. 2019/790 are found in its preamble: technological developments, new business models, legal uncertainty regarding certain uses, including the digital one, the need to introduce exceptions or mandatory limitations for the use of extraction technologies of text and data, for didactic illustration in the digital environment and for the preservation of cultural heritage.*

*The main objectives of the Directive were to harmonize EU law with the rules of international law, as established by the 1996 treaties of the World Intellectual Property Organization, nicknamed the Internet Treaties, the strengthening of intellectual property, the reduction of copyright conflicts between Member States and the provision of a appropriate remuneration for content producers.<sup>26</sup>*

*Its purpose and scope are to further harmonize Union law in the field of copyright and related rights in the internal market, taking into account digital and cross-border uses of protected content, while also establishing rules on exceptions and limitations of copyright and related rights, facilitating licenses, ensuring a performing market for the exploitation of works and other protected objects.*

*The aspects regarding the new technologies that allow the automated numerical analysis of the information in digital form, such as texts, sounds, images or other data, are also known as the extraction of text and data. This process makes it possible to process large volumes of information for acquiring new knowledge and discovering new trends, supporting innovation, being beneficial to universities and other research organizations, as well as institutions of cultural heritage conservation.<sup>27</sup>*

*The Directive also regulates the establishment of a unique online legal portal on which the information received from cultural heritage conservation institutions, collective management bodies or relevant public authorities will be available, in order to identify works or other protected objects outside the commercial circuit. The portal will be created and managed by the European Union Office for Intellectual Property in accordance with EU Regulation no. 386/2012<sup>28</sup>. Member States have the opportunity to take additional publicity measures, as necessary, to raise awareness of rights holders at a general level.*

*The provisions of this directive protect the press releases in case of online use, giving the press publishers the right of reproduction and the right to make the publications*

---

<sup>26</sup> M.L.Creață, A.M. Marinescu, *EU Directive no. 2019/790 of the European Parliament and of the Council of 17 April 2019 regarding the copyright and related rights of the single digital market and amending Directives no. 96/9/EC and no. 2001/29/EC*, Romanian Journal of Intellectual Property Law no.2/2019, p. 43.

<sup>27</sup> M.L.Creață, A.M. Marinescu, *EU Directive no. 2019/790 of the European Parliament and of the Council of 17 April 2019 regarding the copyright and related rights of the single digital market and amending Directives no. 96/9/EC and no. 2001/29/EC*, Romanian Journal of Intellectual Property Law no.2/2019, p. 45.

<sup>28</sup> Published in the Official Journal of the European Union L 129 /1 from May 16th, 2012.

*available to the public. At the same time, the rights and interests of the rights holders on works and other protected objects incorporated in a press release are protected, being able to exploit their works independently of the press publication in which they are incorporated. In the case of requesting the right holders' access to their works or other specific protected objects or the elimination of those works, duly justified, a quick and efficient mechanism for resolving complaints and appeals has been introduced.*

*Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by June 7, 2021. They shall forthwith inform the Commission thereof. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.*

### **Conclusions**

The fast-technological developments continue to transform the way in which works and other protected objects are created, produced, distributed and exploited. New business models and new actors are emerging. It is essential that the relevant legislation is designed in such a way as to allow its application in the future, in order not to limit technological developments. This is why it was necessary to adopt legislation to cover the legislative shortcomings.

The Digital Rights Copyright Directive (Directive no. 2019/790), approved by the EP and the Council in April 2019, is the result of a legislative proposal made by the EC in September 2016, Directive no. 2016/280. It had an extremely difficult route, with numerous debates and votes in Parliament and Council. The directive has sparked lively debate on how large internet platforms and news aggregators, such as Google or YouTube, will provide the right fees for content creators (musicians, actors, journalists, etc.) and provide them in the online environment, the same benefits as in the offline environment.<sup>29</sup>

The Copyright Directive contains a number of varied provisions that constitute a significant updating of European Union Copyright Law which will reduce the difference between national copyright regimes and allow for wider access to and use of copyright protected works benefitting the creative sectors, press publishers, researchers, educators, cultural heritage institutions, and citizens. This includes removing digital barriers between Member States by introducing several mandatory copyright exceptions to widen the scope of use of materials in the fields of education, research and facilitating cultural heritage institutions to make copies of works in their collections to the extent necessary for their preservation. In addition, the Directive also makes provisions for licensing of "out-of-commerce" works.

---

<sup>29</sup> G. Drăgan, [http://ier.gov.ro/wp-content/uploads/2019/07/newsletter\\_iulie\\_2019\\_ro\\_final.pdf](http://ier.gov.ro/wp-content/uploads/2019/07/newsletter_iulie_2019_ro_final.pdf).

One of the main objectives of the Copyright Directive is to address the ‘value gap’, whereby rightsholders are receiving less remuneration despite the increased usage of their works in recent years. The relevant articles aim at ensuring that authors and rights holders receive a fair share of the value that is generated by the use of their works, particularly by online platforms that give access to user-uploaded content, while being minimally burdensome on platforms. The provisions will allow press publishers to receive remuneration for the online exploitation of their works by news aggregators, without preventing users from making lawful use of those works and will help ensure the sustainability of the publishing industry. The Directive also imposes additional transparency obligations on online platforms in licensing negotiations with rightsholders and provides for a contract adjustment mechanism where the remuneration originally agreed under a license or a transfer of rights is disproportionately low compared to the revenues generated, effectively allowing a renegotiation of contracts.

Finally, the Directive introduces a mechanism which will allow authors or performers the right to revoke the license related to their works should they not be exploited in a reasonable timeframe.<sup>30</sup>

---

<sup>30</sup> <https://dbei.gov.ie/en/Consultations/Consultations-files/Consultation-transposition-Copyright-Directive-EU-2019-790-Articles-13-17.pdf>.