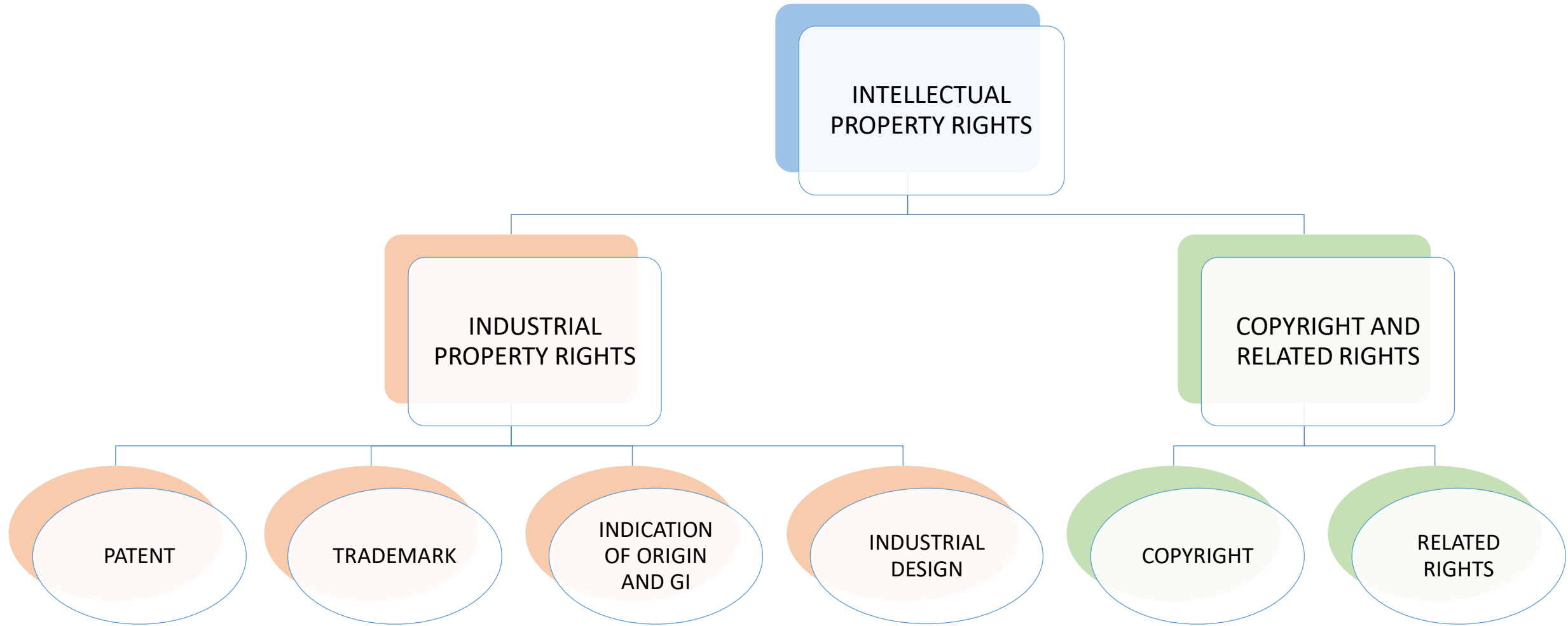


# Copyright protection of art works

Maja Kambovska PhD



# Copyright system

- Legal framework: Law on copyright and related rights (+ other rules)
- Key state institutions
  - Ministry of Culture
  - Authorities involved in rights protection (MOI, public prosecution, courts)
- Other non – governmental bodies:
  - Collective organisations for rights management
  - Artists' associations (DLUM, FSM)
  - European/international associations (CISAC, GESAC, EVA, CEPIC)
- International organisations
  - WIPO
  - EUIPO

# Copyright work

A copyright work is an **intellectual and individual** creation in the field of literature, science and art, **expressed in any manner and form**.

# Types of copyright works

Copyright work shall be, in particular

- 1) written work (book, paper, article, handbook, brochure, treatise and other works of the same nature);
- 2) computer program, as a written work;
- 3) spoken work, (lecture, speech, address, and other works of the same nature);
- 4) musical work, with or without words;
- 5) dramatic work, dramatico-musical work, choreographic work and a work of pantomime;
- 6) photographic work and a work created in a process analogous to photography;
- 7) audiovisual work (cinematographic work and other work expressed in moving images);
- 8) works of fine art (painting, drawing, print, sculpture, etc.);
- 9) works of architecture,
- 10) works of applied art and design; and
- 11) cartographic work, plan, sketch, technical drawing, project, table, plastic work and other work of identical or similar character in the domain of geography, topography, architecture and science

# Other rules for copyright works

The **adaptation** of a copyright work, where it fulfills the conditions of the Law, shall be considered as a copyright work.

Any **component part** of the copyright work, as well as the **title** of the work, insofar as it is intellectual and individual creation by itself, shall be considered as a separate copyright work.

It shall not be permitted to use as the title of a copyright work a title that has already been used for a work of the same type, if that title would create or would lead to confusion regarding the copyright work and the author

# Collections of works

A collection of copyright works, of expressions of folklore, of data or of other material, which, by reason of **the selection and arrangement of its component parts**, constitutes an individual and intellectual creation, such as: encyclopedia, anthology, book of papers, music collection, collection of photographs, maps, exhibition, placement, collection of documents, and other collections, shall be considered as a copyright work.

The copyright in the collection shall not extend to its component parts and shall not affect the rights in such parts.



Foto: Jonn Leffmann

# Unprotected creations

The following shall not be considered as a copyright work:

- Ideas, theories, concepts, operation methodologies, or mathematical concepts, regardless of the manner of explanation or expression;
- Official texts of a political, legislative, administrative and judicial nature and their official translations;
- Daily and other news having the character of mere media information, miscellaneous facts and data; and
- Ideas and concepts which underlie any element of a computer program, including the program components that enable connection and interaction between the elements of the software and of the hardware equipment (interfaces).



# Author

The author is a **natural person** who has created the copyright work.

The copyright belongs to the author **by the mere act of creation of the work.**

## Presumption of authorship

- A person whose name, pseudonym, code or other sign is denoted in a usual manner on the work or its copies, or is indicated at the time of its disclosure, shall be considered as an author, until proved to the contrary.
- In a case where the author is unknown, nor can be determined in accordance with the above criteria, the copyright shall be exercised by the person who has lawfully disclosed the copyright work.

# Co-authors

The copyright in a work created in collaboration of two or more persons shall belong to all those persons (co-authors).

The consent of all the co-authors shall be necessary for every use of the work. An individual co-author cannot refuse to give his consent for reasons that are contrary to the principle of conscientiousness and good faith.

Where the work created by co-authors is composed of independent parts (divisible whole), each co-author may authorise independent use of his part, provided that such use does not prejudice the use of the joint work or the rights of the other co-authors.

The share of each co-author in the remuneration from the use of the work shall be determined in a proportion to the real contribution that each one of them had in the creation of the work, unless otherwise agreed by the co-authors.

In case where the real contribution can not be determined, or where no agreement has been reached between the co-authors, each co-author shall be entitled to an equal part of the remuneration.

# Contents of copyright

The copyright is an indivisible right and it is **inseparable from the copyright work.**

The copyright is consisting of:

- exclusive moral rights,
- exclusive economic rights and
- other rights.

# Relationship between copyright and ownership right

Copyright is an autonomous right and it is independent from the ownership right in the objects in which the copyright work is incorporated.

## Separateness of transfer

- The transfer of economic rights of the author of the work shall not affect the ownership right in the object where the copyright work is incorporated, unless otherwise provided by law or by contract. (
- The transfer of the ownership right shall not affect the transfer of the economic rights of the author of the work, unless otherwise provided by law or by contract.

# Moral rights

Moral rights protect the author with regard to his **personal and spiritual (intellectual) ties to the work**.

The author has the following exclusive moral rights:

1. **Right to claim authorship** - the right to have his name, pseudonym, or other designation denoted on each copy of the work, or stated at each public use of the work, unless the author explicitly declares in a written form that he does not want to have his authorship denoted, or unless at the time of the use it is technically impossible or impractical.
2. **Right of first disclosure** of his copyright work and the right to determine the conditions of disclosure. Until the first disclosure only the author has the right to publicly reveal the content or the description of his work
3. **Right of protection of the integrity of the work** – right to object to any modification, distortion, or mutilation of the work, which would be prejudicial to his personality, honor and reputation, as well as to object to the destruction of the work.
4. **Right of withdrawal** - the right to withdraw the right of use from the holder of an economic right, in case where any further use would be prejudicial to his personality, honor, and reputation. The author is obliged to compensate the holder for the damage caused by such withdrawal, upon being notified by the right holder of the amount of damage within three months from the receipt of the withdrawal. Upon the withdrawal the economic right shall return to the author. If the author wishes to transfer again the economic right he shall be obliged to offer such transfer primarily and under the same conditions to the same right holder. These provisions do not apply to computer programs, audiovisual works, and electronic databases.

The author **may not waive** these rights

# Economic rights

The economic rights protect the **property interests of the author** in his copyright work.

The author has the exclusive right to **authorize or prohibit the use of his work or copies thereof** by any other person, except in the cases provided by the Law.

The following exclusive economic rights of the author arise from the use of the copyright work or its copies:

1. Right of reproduction of the work;
2. Right of distribution of the work;
3. Right of communication to the public of the work; and
4. Right of adaptation of the work.

# Reproduction

Reproduction shall mean fixation i.e. recording of the work in a material or other appropriate medium (electronic and other), as well as making one or more copies of a copyright work, in whole or in part, directly or indirectly, temporarily or permanently, by any means and in any form.

The reproduction shall be carried out, in particular, by graphic processes (graphic reproduction), by three-dimensional reproduction, by photocopying and other photographic processes achieving the same effect, by building or carrying out works of architecture, by sound or visual fixation, by storage of the work in electronic form (electronic fixation), and by transfer of the work from an analogue onto a digital system

# Distribution

Distribution is offering to the public an original or a copy of the work for the purpose of sale, including importation and rental, and covering the right of remuneration for lending.

- Importation shall mean placing on the domestic market originals or copies of a copyright work intended for further circulation for commercial purposes.
- Rental shall mean making available for use an original or a copy of a copyright work for a limited period of time, for economic advantage. The rental shall not apply to constructed works of architecture ) and originals and copies of works of applied art and design.
- Lending shall mean making available for use of a copyright work, for a limited period of time, by organizations which are accessible to the public, without obtaining economic advantage.

The right of distribution in the territory of the Republic of Macedonia shall be exhausted with the first sale of an original or copy of a copyright work, carried out by the right holder or with his consent. The exhaustion shall not apply to the rights of importation, rental and lending.



# Communication to the public

Communication to the public is:

1. Public performance - live speaking or reciting of works in the field of literature; live performance of musical works and stage performance or live presentation of dramatic, dramatico-musical, choreographic, or pantomime works
2. Public transmission - communication to the public by loudspeaker, screen or by any other technical means, of the following: Live performance outside of the place where the work is performed live; phonograms, video grams from the medium in which they are fixed; and broadcast copyright work.
3. **Public exhibition** - presentation to the public of an original or a copy of a work of fine art, photography, applied art, design, architecture, physical planning, cartography, as well as other works of scientific and technical nature
4. **Public presentation** - presentation to the public, by technical means, of an audiovisual work or of a work of photography, fine art, architecture, physical planning, applied art, design, cartography, and works of scientific and technical nature
5. Broadcasting - communication of a copyright work by radio and television program signals intended for reception by the public.
6. Retransmission (rebroadcast) - simultaneous, unabridged and unaltered transmission of a broadcast of a copyright work, by a different broadcasting organization; or by a cable or microwave system, where the initial broadcast is carried out by a broadcasting organization wireless or by wire
7. **Making available to the public** - communication to the public of a copyright work, by wire or wireless means, including internet or other communication networks, in a way which allows members of the public to access the work, from a place and at a time individually chosen by them.

# Adaptation

Adaptation is translation, modification, including audiovisual adaptation, musical arrangement or other alteration of a copyright work or of an expression of folklore, as well as of other written materials, such as translations of official texts which are not made for official use

The rights in the copyright work created with the adaptation shall in no way affect the rights in the adapted work



*Photo: Patrick Cariou – 2000; Adaptation: Richard Prince – 2008*

# Other rights of the author

The author has the following other rights:

1. Right of access and delivery
2. Right of resale (right of royalty from resale)
3. Right of remuneration for reproduction for private use
4. Right of remuneration for rental
5. Right of remuneration for lending

# Right of access and delivery

The author shall have the right to access the original or the copy of his work in possession by another person, for the purpose of exercising the right of reproduction or adaptation of the work, insofar as it does not conflict with the legitimate interest of the possessor.

The author shall have the right to demand from the possessor to deliver to him the original of the work of fine art or of the photographic work for the purpose of public exhibition or other form of disclosure, if there is justified interest thereof. The delivery may be subjected to lodging of security or to insurance in the amount of the market value of the original.

The author shall be obliged to carry out the access and delivery with the least possible inconveniences to the possessor, and at his own expense. In case of damage to the work, the author shall be liable regardless of his fault.

# Right of resale for art works (right of royalty from resale)

Background: introduced in France in 1920. The reason was the experience of the heirs of the French painter Jean Francois Millet, who initially sold the painting El Angelus for around 100 USD. 15 years after his death, the painting was sold for 150.000 USD, making a big profit for the seller while the painter's family got nothing.

Later the right was introduced on optional basis in the Berne Convention in 1948 and the EU harmonized it with the Resale Right Directive in 2001.



El Ángelus, Jean-François Millet - Google Art Project,  
<https://commons.wikimedia.org/w/index.php?curid=20110808>

# Right of resale for art works (right of royalty from resale)

The author shall have the right **to be notified and to obtain royalty from every subsequent sale** or other disposal of an original of a work of art, as provided by the Law (right of resale). The resale right **cannot be subject to waive, disposal or judicial execution**.

An original work of art, within the meaning of the resale right, shall mean a work of fine art, graphic art or plastic art, such as: paintings, collages, drawings, prints, engravings, lithographs, sculptures, ceramics, carvings, tapestries, glassware, photographs or works created in a process analogous to photography, as well as copies of the mentioned works that are considered as originals.

Copies of the mentioned works created by the author himself or made with his authorization in limited numbers, shall be considered as originals. They shall be, in a usual manner, numbered, signed or otherwise duly indicated by the author.

# Amount belonging to the author

The author's royalty from the resale right shall be determined according to the following rates:

1. 5% for the portion of the sale price from 300 up to 3.000 EUR;
2. 4% for the portion of the sale price from 3.000,01 up to 50.000 EUR;
3. 3% for the portion of the sale price from 50.000,01 up to 200.000 EUR; 13
4. 1% for the portion of the sale price from 200.000,01 up to 350.000 EUR;
5. 0,5% for the portion of the sale price from 350.000,01 to 500.000 EUR;
6. 0,25% for the portion of the sale price exceeding 500.000 EUR.

The highest amount of the royalty may not exceed 12.500 EUR.

The author's royalty shall be jointly payable by the seller or art works, the art dealer, the organizer of the auction, or other intermediary who carries out the sale of art works.

The royalties under this Article shall be calculated in MKD counter value according to the standard exchange rate of the National Bank of the Republic of Macedonia on the day of the sale. The basis for calculating the royalties shall be the sale price, excluding the value-added tax (VAT)

# Right of information

The author, his successors or the societies for collective management of copyright shall have the right, within three years from the day of the sale of the copyright work, to request from the selling entities any information necessary to secure payment of the royalty from the resale, in particular concerning the titles of the sold works, the owner and the intermediary, the sale contracts and the sale price



# Right of remuneration for certain uses

- Remuneration for private copying

The author shall have the right to a part of the single remuneration for the reproduction of phonograms and video grams and for the photocopying of his work, which is carried out for private use.

- Remuneration for rental

The author who has transferred his right of rental to the phonogram producer or to the film producer shall retain the right of remuneration for every rental of his work.

- Remuneration for lending

The author shall have the right to remuneration for the lending of an original or copy of his copyright work.

The lending right shall not apply to architectural structures, works of applied art and design, or works that are mutually lent by the organizations exempted from payment.

The remuneration shall be payable by the organization, which is carrying out the lending. Public institutions in the field of science, culture and education (libraries, film archives, scientific and educational institutions) shall be exempted from the duty of payment.

The author may not waive these rights.

There rights are managed by collective management organisations.

# Exceptions and limitations to the economic rights of the author

A copyright work can be used without authorization by the author, with or without remuneration, only if the work has been disclosed.

The use can be carried out only in certain special cases, provided that the use does not conflict with the normal exploitation of the work, and does not unreasonably prejudice the legitimate interests of the author

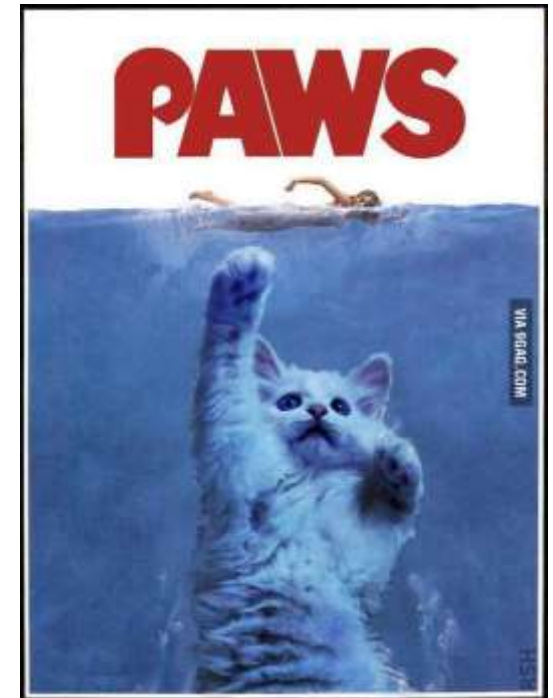
# Use of copyright works without authorization and without payment

- **Temporary reproduction** of a copyright work, provided the reproduction is of transient or incidental character, and/or it constitutes an integral and essential part of a technological process;
- Reproduction made by **public libraries, educational establishments or museums, or by archives**, for the purpose of carrying out their activity and without economic or commercial purpose;
- Use of works for **illustration for teaching or scientific research** to the extent justified by the non-commercial purpose to be achieved, provided that the name of the author and the source is indicated, unless this turns out to be impossible;
- Use of copyright works **for the benefit of persons with special needs** in a way which is directly related to the special need, to the extent required by the need and for a non-commercial purpose;
- Use of **parts of copyright works (quotations), for scientific research, education, criticism, polemics, or review**, in a scope and to the extent required by the specific purpose and provided that the name of the author and the source is indicated, unless this turns out to be impossible;
- Use of works for the purposes of **public security**, or in a judicial, parliamentary or administrative **procedure**;
- Use of works during **religious rituals or other official celebrations** organized by the state authorities or the local self-government;
- Use of architectural or sculptural works **permanently located in public places** (streets, squares, parks, etc.);



# Use of copyright works without authorization and without payment

- Use of works in the field of fine and applied art, architecture, industrial design and photographic works exhibited at public exhibitions or at auctions, by the organizer, for **posters or catalogues** made with no commercial purposes, to the extent necessary for promotion of those events;
- Adaptation of a work into a **parody, caricature, or pastiche**, provided that the adaptation does not create confusion with regard to the original of the work and the authorship, and provided the adaptation is in the frames of authorized use of the work;
- Reproduction, public communication in shops, at fairs and other places where the **operation of equipment for recording, reproduction and communication of sound and image is demonstrated**, to the extent necessary to demonstrate the functioning of the equipment. The fixations/recordings made on this basis shall be erased immediately;
- **Incidental (secondary) inclusion** of a copyright work into some other material.
- Use of drawings or plans of an architectural object, for the purpose of its **reconstruction**;
- Communication to the public and making available to the public of a copyright work for the purpose of **research or private study** in certain locations within the public scientific, cultural, educational and other establishments of similar nature, in case where a work is not subject to purchase, or its use is not subject to having an authorization, and where the work is contained in the collections/fund of these establishments.



# Use of copyright works without authorization, but against payment

The use of a copyright work against payment of remuneration shall apply to the following cases:

- Reproduction on paper or any similar medium, by way of photocopying or any other analogous technique or other process having similar effects, with the exception of graphic editions of a musical work (sheet music);
- Reproduction on any medium, made by a natural person for private use, without commercial purpose.

# Duration of copyright

**The economic rights shall run for the life of the author and for 70 years after his death.**

- co-authorship - the term shall be calculated from the death of the last surviving author.
- co-authorship of an audiovisual work - from the death of the last surviving person from among the following: the principal director, the author of the screenplay, the author of the dialogues and the composer of the music created for the audiovisual work.

Anonymous and pseudonymous - 70 years after the lawful disclosure of the work.

**The moral rights** shall run for various terms:

- **The right of withdrawal - for the life of the author**
- **Rights of recognition and indication of the authorship, and of protection of the integrity of the copyright work run indefinitely.** In addition to the author's successors, the relevant (professional) association of authors, the persons having legitimate interest, and the Macedonian Academy of Sciences and Arts shall be responsible for the management and protection of these moral rights of the author after his death.

The copyright work, after the expiration of the terms of duration of the economic rights, shall be used without authorization and without remuneration.

# Transfer of economic rights

The author may transfer to other persons (right holders) separate economic rights.

The transfer may be carried out by:

- succession,
- written contract (exclusive or non-exclusive) or
- in other written way (non-exclusive) by an authorization, statement, approval, etc.

# Transfer by contract

The author may transfer economic rights to other persons by way of a written contract.

The contract that is not concluded in a written form shall not produce legal effect.

The contract shall contain, in particular

- the type of the rights being transferred (e.g. reproduction, public communication)
- their scope (exclusive or non-exclusive),
- the territory concerned by the transfer of rights
- the duration of the transfer, and
- the author's remuneration.

Disputed or ambiguous provisions of the contract shall be interpreted in the author's interest.



# Determining the remuneration in the contract for rights transfer

The author's remuneration shall be determined according to the principle of fairness, the type of the work, the type and the scope of the right that is being transferred, the duration, and other relevant circumstances of its use.

If the use of a copyright work generates revenue which is significantly larger than the agreed remuneration, the author shall have the right to demand a revision of the agreed remuneration, which will allow him a more equitable share of the revenue. The author may not waive this right.

In a case when the author's remuneration is agreed or determined according to the revenue derived from the use of the work, the user of the work shall be obliged to keep appropriate books or other records that allow determining the amount of the generated revenue.

The user shall be obliged to enable the copyright holder to inspect the documentation/records and shall deliver to him the necessary reports on the generated revenue.

# What cannot be transferred to other persons

The transfer of the following shall be null and void:

1. The copyright, as a whole;
2. The moral rights;
3. Unknown types of use of the copyright work.

# Termination of the transfer

The author may terminate the contract or withdraw the authorization or another written act for transfer of an economic right, if the holder of the exclusive right exploits it to an insufficient extent or does not exercise it at all, thereby significantly harming the author's interests.

The author may not exercise the termination or the withdrawal where the reasons for the termination are attributable to him.

The author may offer to the holder an additional time period for appropriate use of the right.

Upon exercising the termination or the withdrawal, the economic right shall return to the author.

The author shall be obliged to pay adequate compensation for damages to the right holder, if so required by the principle of fairness.

The author may not waive the right of termination or withdrawal provided.

# Contract for commission of a copyright work

By the contract for commission of a copyright work, the author shall create the commissioned copyright work and deliver it to the commissioning person.

The person commissioning the work shall have the right to supervise the work and give instructions, unless by doing so he encroaches upon the author's freedom of creation.

The author shall retain the copyright in the commissioned work, unless otherwise provided by law or by contract.

# Copyright work created in the course of employment

In case when a copyright work is created by an employee in the course of execution of his duties or following the instructions by the employer, it shall be considered that the economic rights of the author of that work have been exclusively transferred to the employer for a period of five years from the completion of the work, unless otherwise provided by a collective agreement or employment contract.

After expiry of the term the economic rights shall belong to the employee, while the employer may demand another exclusive transfer provided that he pays the employee remuneration for each separate type of economic rights.

Notwithstanding, the author shall have the right to remuneration for each rental. The author may not waive this right.

The employee shall retain the exclusive right to use the work as part of his collected works.

# Audiovisual work

Audiovisual work shall be a cinematographic or other work expressed in a form of sequence of moving images, whether or not accompanied by sound, regardless of the type of the carrier which contains it.

Authors of an audiovisual work shall be: the author of the screenplay, the principal director and the principal cameraman. In case when animation of any kind is an essential element of the work, the principal animator shall also be considered as author. Where music is an essential element of the work, the author of the music specially created for use in the audiovisual work shall also be considered as author.

Authors of contributions: The animator and the music author, when not considered as authors of the audiovisual work, as well as the set designer, the costume designer, the editor, and the make-up artist shall have copyright only in their own contributions to the audiovisual work.

# Contract for film production

The film production contract shall regulate the relations between the film producer on one hand, and the authors of the audiovisual work and the authors of contributions on the other hand, as well as the relations between the authors themselves.

By concluding the film production contract, it shall be considered that the authors and the authors of contributions have transferred to the film producer, exclusively and without limitation, all their economic rights in the audiovisual work, including the right of translation by subtitling or dubbing, unless otherwise provided by contract.

The authors shall keep the right to equitable remuneration from the film producer for every use, and the authors of contributions shall keep the right to use their contributions to the audiovisual work separately. They may not waive these rights.

The film producer shall be obliged, at least once a year, to deliver to the authors of the audiovisual work a report on the generated revenue, separately for every type of use of the work.

# Individual and collective rights management

The holders of copyright may manage their rights:

- individually (separately for each work), personally or through a representative, or
- collectively (jointly for several works and for several right holders) through an organization for collective rights management.

Collective rights management shall cover legal matters with the users of rights (granting licenses), collection of remunerations from the use and their distribution, and protection of rights before the state authorities and other entities.

The collective management shall be carried out only for disclosed copyright works.



# Situations when rights are managed collectively

As a rule: in cases where the management cannot be carried out individually, due to the character of the copyright works and due to the conditions and manner of their use.

As an option: collective management may be carried out for exclusive rights that can be managed individually, if the author or right holder authorizes the collective organization for that.

# Rights that can be managed collectively

Rights that can be managed collectively shall be, in particular:

- The author's right of royalty from the right of resale;
- The author's right of remuneration for public lending;
- The right of remuneration of the author and the performer for rental of phonograms or video grams;
- The right of remuneration of the author and the publisher from reproduction on paper by photocopying or any other analogous technique, for private use;
- The right of remuneration of the author, the performer, and the film producer for the reproduction of the video gram for private use;
- The right of cable retransmission of copyright works.

Collective management is carried out by an organization for collective management, that needs to request and obtain a license from the Ministry of Culture.

# Protection of copyright

Who is entitled to copyright protection?

The author, the right holder, the person authorized to use the right and the collective organization.

Copyright shall enjoy criminal, civil and misdemeanor protection.

- Criminal protection shall be carried out according to the provisions of the Criminal Code and the regulations on criminal procedure.
- Civil protection shall be carried out according to the regulations on litigation procedure, securing claims, obligations relations, and the Law on Copyright.
- Misdemeanor protection shall be carried out according to the regulations on misdemeanors and the Law on Copyright.

# Application of the Law on Copyright to foreign authors

Foreigners shall enjoy protection under the Law with respect to their moral rights in all cases, and with respect to the right of resale only on the condition of factual reciprocity.

Protection under the Law on Copyright is granted to:

- Foreign authors who are domiciled in the Republic of Macedonia;
- Works that are first published in the Republic of Macedonia or within 30 days from the day of first publication in another country;
- Audiovisual works whose producer has his principal establishment or domicile in the Republic of Macedonia;
- Works of architecture or fine art which, as an immovable property or a component part thereof, are located on the territory of the Republic of Macedonia.

# Takeaway messages

- Establishing a collective management system for the resale right
- Using all sources to gain and spread knowledge about the rights
- Taking care when transferring rights by contract

Thank you for your attention!

Contact: [maja\\_kambovska@yahoo.com](mailto:maja_kambovska@yahoo.com)