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Copyright, to be or not to be

Questionnaire - Country Report Greece

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The traditional justifications for copyright and related rights

In your country, which justifications for copyright have been presented in connection with your national legislation, for example in the preamble of the Statute or in its explanatory remarks or similar official documents?

Greek law on copyright and related rights follows the civil law system referred to as “authors’ rights” and therefore the rights of authors are seen basically as the protection of authorial personality. “The threshold and guideline” of the greek legislation on copyright “is the absolute and most effective protection of intellectual creators. This is because the copyright protection is the protection of creation and creativity, a reward of the spiritual toil and an incentive for the contribution to the development of our cultural level and our cultural heritage”. These views, written by late Professor George Koumantos, are expressly referred to in the explanatory report on the draft of Greek law 2121/1993 for copyright and summarize the scope and the essence of the protection of such rights in Greece. Apart of the above principle of natural justice, copyright is of great economic importance, since the so-called cultural industries, such as publishing houses, producers of audio-visual works, producers of phonograms, broadcasting organizations, theatre companies, cinemas and theatres, galleries and auctions, software and database companies, form the key factors to national income. The effective protection of copyright encourages investment, creativity and innovation and becomes an instrument of economic policy. According to the cultural argument, the protection of creativity contributes to the development of national culture and cultural creativity.

The Greek Constitution protects intellectual property with the provisions guaranteeing individual rights, particularly Article 17, which guarantees the protection of property, as well as other provisions, such as Article 2 paragraph 1 which refers to the principle of protection of human value, Article 5 paragraph 1 and 3, which guarantees the free development of personality, Article 14 paragraph 1, which enshrines freedom of expression and dissemination of reflections and Article 16 paragraph 1, which refers to the freedom of art, science, research and teaching. The constitutional protection of intellectual property is directly accepted by jurisprudence as well.

Are there any similar justifications for related rights? Are the arguments the same as for copyright in literary and artistic works or are there different or additional justifications?

The justification of economic importance are similar for related rights. The protection of performers can be justified on the basis of morality in the sense that the performance is connected with performer's one personality. Therefore the performer has the right to decide the conditions of exploitation of his performance. Article 53 of Greek law 2121/1993 confirms the independence of copyright and related rights. It is provided that the protection recognized to the right holders of related rights leaves integral the copyright protection and in no case affects it. In no circumstance the provisions of the articles concerning the related rights may be interpreted in such a manner as to lessen or prejudice copyright protection. Where the performers and the other right holders of related rights (producers of phonograms and audio-visual works broadcasting organizations and the publishers of printed matters) acquire the right of copyright over a work in addition to the related right, the right of copyright and the related right apply in parallel with each other and confer the powers, deriving from each right.

Is it possible with any certainty to trace the impact of such justifications in the provisions of the law, or is their influence more on a general (philosophical) level?

The aim of the Greek law on copyright is the full and effective protection of intellectual authors, a principle manifested in many provisions, such as the broad protection of moral rights, the rule that only natural persons may be considered as authors, the establishment of the percentage fee for authors, the written form of legal acts, the non-entitlement to conclude contracts which cover the whole of the future works or concerning future method of exploitation, the equitable remuneration for reproduction of works for private use, the interpretative rules concerning the term, purpose, extent and means of exploitation, the provisions concerning the enforcement of rights and, in particular, the civil sanctions which inter alia facilitates the computation and restoration of damages, as well as the strict penal sanctions. Greek copyright legislation achieves the balance of interests notably by the term provisions and the limitations.

Are there similar, or different or supplementary justifications for copyright and related rights expressed in the legal literature?

The justifications in the legal literature are similar.

Economic aspects of copyright and related rights

Has there in your country been conducted research on the economic size of the copyright-based industries? If yes, please summarize the results.

We are not aware of any similar study in Greece. There have been only studies regarding the impact of piracy. For example there has been a study by Professor Petrakis about the financial cost of (non) protection of copyright in 1999 and studies about the size of piracy in specific sectors such as music or software in 2007. These studies are published on the site of the Hellenic Copyright Organization at

<http://www.opi.gr/index.php/en/general-information-on-copyright/observatory-for-piracy>.

Has the research been conducted in accordance with a generally accepted and described methodology in order to make it comparable to similar research abroad?

Has there been any empirical research in your country showing who benefits economically from copyright and related rights protection? If yes, please summarize the results and the methodology used.

Individual and collective licensing as a means of improving the functioning and acceptance of copyright and related rights

Is there a wide-spread culture of collective management of copyright and related rights in your country, or is it limited to the 'core' areas of musical performing rights and reprography rights? Please describe the areas where collective management is used.

In Greece there is a wide-spread culture of collective management of copyright and related rights. Collective management is used in the following areas ; musical works, theatrical works, authors of audiovisual works, photographs, works of fine arts, authors of literature, authors and editors of printed matters, performers, producers of phonograms, producers of audiovisual works, broadcasting organizations.

Collective management societies that represent creators and authors are the following: AEPI for composers and lyricists, Athina for directors and scriptwriters, Autodiaxeirisi for composers and lyricists, Thespiis for theatrical writers and translators of theatrical plays, Isokratis for photography directors, stage designers, film editors, OSDEETE creators of fine arts, Phoebus for photographers ([www. opi.gr](http://www.opi.gr)).

Collective management societies that represent related rights right holders are the following: Apollon for musicians, Dionysos for actors, Erato for singers and performers, Dias for producers of audiovisual works, Ermias for producers of motion pictures, Grammo for producers of phonograms, Iridanos for producers of audiovisual works, Promedia for producers of audiovisual works, Tileoptika Dikaiomata SA for broadcasting organizations and producers of audiovisual works, GEA for sound works (www.opi.gr).

Collective protection societies are: a) EPOE/Company of protection of audiovisual works and b) OPDDE/Advertising Companies Rights Protection Societies (www.opi.gr)

Are there legislative provisions in your national law aiming at facilitating the management of copyright and related rights? If yes, please summarize.

Greek Law introduces a presumption providing that a collecting society is entitled to have the competence to administer and/or protect the rights in all the works or in respect of all the authors concerning which or whom a declaration of transfer to the society has been effected in writing, or for which it has been granted power of attorney. The presumption is valid both for the civil and criminal protection of the works or the authors that have signed an assignment contract with the collective management

organization. The Introductory Report to L. 2121/1993 shows that the purpose of the arrangement was to safeguard the legitimate power of the organization to manage and provide judicial protection to works and authors, without the need to produce thousands of documents which would have been necessary under the general procedural provisions and without risking the dismissal of the action due to vagueness which, in such matters, would be impossible to set aside.

Regardless of whether its authorization rests on a transfer of rights or on power of attorney, a collecting society is entitled to initiate judicial or extrajudicial action in its own name and to exercise in full legitimacy all the rights transferred to it, or for which it holds power of attorney. When seeking the protection of the courts for works or authors under its protection a collecting society is not required to provide an exhaustive list of all of the works which have been the object of the unlicensed exploitation, and it may lodge only a sample list.

Which models for limitations and exceptions have been implemented in your national law? Such as free use, statutory licensing, compulsory licensing, obligatory collective management, extended collective management, other models? Please provide a general overview.

Greek legislation contains specific limitations on the economic right with regard to its content and extent (Section IV of L. 2121/1993 art. 18-28, 28A, 28B, 28C). These limitations are justified on grounds of social policy, research or education promotion and facilitation and have as their purpose the protection of society as a whole. A reflection of these considerations can be seen in the provisions concerning the following cases: use of the work for the purpose of informing the public (art. 25), reproduction for teaching purposes (art. 21) and to meet other educational needs (art. 20), reproduction for judicial or administrative purposes (art. 24), the quotation of extracts with a view to the advancement of science and letters (art. 19) and public performance on special occasions (art. 27). Art. 28A contains provisions concerning the reproduction for the benefit of blinds and deaf-mute and art. 28B concerns temporary acts of reproduction and art. 28C contains a clause of general application ("three-step test") Specific uses of computer programs are laid down in art. 42-43 of L. 2121/1993 in conformity with the Directive 2009/24. Art. 27A implements the Directive on orphan works and contains provisions concerning the subject matter and scope of protection, the diligent search to identify the right holder, the end of orphan works status, as well as the permitted uses of orphan works.

Reproduction for private use is dealt with in art. 18 of L. 2121/1993. This provision does apply to analogue and digital reproduction recognizing to the author and to certain holders of related rights (performers, phonogram producers and producers of audiovisual works), the right to an equitable remuneration if, for the free reproduction of the work, use is made of technical media, such as (a) recording equipment for sound or image or sound and image, (b) equipment or parts not incorporated or not susceptible to incorporation in the main computer unit operating in conjunction therewith, used solely for digital reproduction or digital transcription to or from analogue media (with the exception of printers), (c) magnetic tapes or other devices for the

reproduction of sound or image or sound and image, including digital reproduction devices – such as CD-RW, CD-R, (d) portable optical magnetic discs with a capacity of more than 100 Mbytes, (e) storage media/disquettes of less than 100 Mbytes, (f) photocopy machines, (g) photocopy paper. It should be noted that reprography is also subject to the regulation of Article 18 of L. 2121/1993. The remuneration is set at 6% of the value of devices for reproduction of sound or image or sound and image, including devices or parts not incorporated or not susceptible to incorporation in the main computer unit (with the exception of scanners), magnetic tapes or other devices suitable for the reproduction of sound or image or sound and image, as well digital reproduction devices more than 100 Mbytes. As it concerns reprography, the remuneration is set at 4% of the value of photocopy machines, scanners, photocopy paper and storage media with a capacity of less than 100 Mbytes.

Equitable remuneration is due to the creator of the work and the beneficiaries of related rights, with the exception of assets to be exported. The remuneration is paid by the importers or producers of such items and is noted in the invoice. It is collected by collecting societies operating with the approval of the Ministry of Culture and covering in whole or in part the concerned category of beneficiaries. The remuneration collected for the import or production of photocopy machines, photocopy paper, storage media (disquettes) of less than 100 million digits and scanners (4%) is distributed in half between the intellectual creators and editors. The remuneration collected for the import or production of recording devices and sound or image or sound and image devices, devices and parts not incorporated in the main computer unit (6%), as well as digital reproduction devices, with the exception of storage media (disquettes) of less than 100 million digits, is distributed as follows: 55% to the intellectual creators, 25% to the performers or performing artists and 20% to the producers of recorded magnetic tapes or other recorded devices for sound or image or sound and image._