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HANDBOOK FOR RIGHTS LEADERS

COPYRIGHT AND RELATED RIGHTS OFFICE IN KOSOVO (OCRR)

The Office of Copyright and Related Rights (OCRR) as an administrative body, with the Director as its head, established and functioning under the supervision of the Minister of Culture, shall have the following tasks:

a. developing and applying adequate strategy and policy for the protection, exercise and enforcement of copyright, related rights and other rights in accordance with the international obligations, national legislation and the corresponding national interests of the Republic of Kosovo;

b. collecting necessary information, carrying out studies, and consulting with governmental bodies, institutions, as well as with the representatives of the interested owners of rights and users;

c. submitting to the Government and/or other governmental bodies proposals where certain measures necessary for the appli-

cations of the strategy and policy mentioned above;
(d) preparing draft laws and regulations concerning the protection, exercise and enforcement of copyright and related rights;

e. representing the Republic of Kosovo at international and regional organizations dealing with copyright, related rights and other rights protected by this Law;
f. establishing and maintaining mutually advantageous cooperation with governmental offices, agencies and research institutions and other organizations of other countries dealing with copyright and related rights, in accordance with the intergovernmental policy of the Republic of Kosovo;

g. in cooperation with the competent judicial, administrative and customs authorities – and where necessary initiating proceedings for the application enforcement measures – actively partic-

ipating in the fight against infringements of rights and, in particular, piracy;

h. accrediting, and supervising the activities of, the collective management organizations;

i. promoting awareness of governmental bodies, judicial, administrative and other institutions, owners of rights and users as well as the general public, concerning the importance and the political, legal and practical aspects of the protection, exercise and enforcement of copyright and related rights through preparing and distributing information materials, organizing awareness campaigns, and maintaining active relationship with the press and media.

COPYRIGHT AND RELATED RIGHTS

With in this context, one of the OCRR's most significant tasks is to encourage and support creativity in the fields of culture and science through the protection of copyright and related rights. To this end raising public awareness is of primary importance as people need to understand that a) copyright is a kind of property and as such it is necessary to be respected and protected and b) the importance of copyright is an essential tool that promotes culture and creativity benefiting society and the economy of the country.

Since June 2011, the OCRR has gone a long way contributing in the development of copyright and related rights regime to modern international standards and also provide guidance and education to the public.

*More specifically the
OCRR has taken actions on:*

Increasing advance in the legislative framework, particularly drafted new legislation and regulations in order to implement the national legislation as well as in order to achieve full harmonization with the EU legislation;

Organizing trainings and education activities for the state officials that have competences in the field of Copyright;

Organizing various activities such as media conferences; seminars; awareness campaigns including those online, in order to raise awareness and encourage creativity and respect for copyright and related rights.

Licencing two collective management societies APIK in the field of music and VAPIK in the field of audiovisual works and working with licensed societies and the users on setting the general tariffs for the use of the copyrighted subject matter in the area of broadcasting and rebroadcasting.

Coordinating the actions against physical and digital piracy, undertaken by the Task Force against Piracy, as a result Kosovo is no longer behind the countries of the region in fighting physical piracy.

Working closely with the national responsible institutions, namely members of the Task Force and the National Council on Intellectual Property in order to strengthen the cooperation;

Cooperating with sister offices in the region and beyond. It is good to mention the excellent cooperation with the Albanian Copyright Office.

This Handbook has been prepared and published by OCRR. It presents an overview of the right, its functionality and purpose, it analyses the rights granted to the rightholders, the subject matter of the protection, as well as issues related to collective management and exploitation, while it explains enforcement. The purpose of the Handbook is to answer to basic legal question related to the field and make notions and concepts related to Copyright and Related matters clear to rightholders.

DEFINING INTELLECTUAL PROPERTY LAW

WHAT IS INTELLECTUAL PROPERTY?

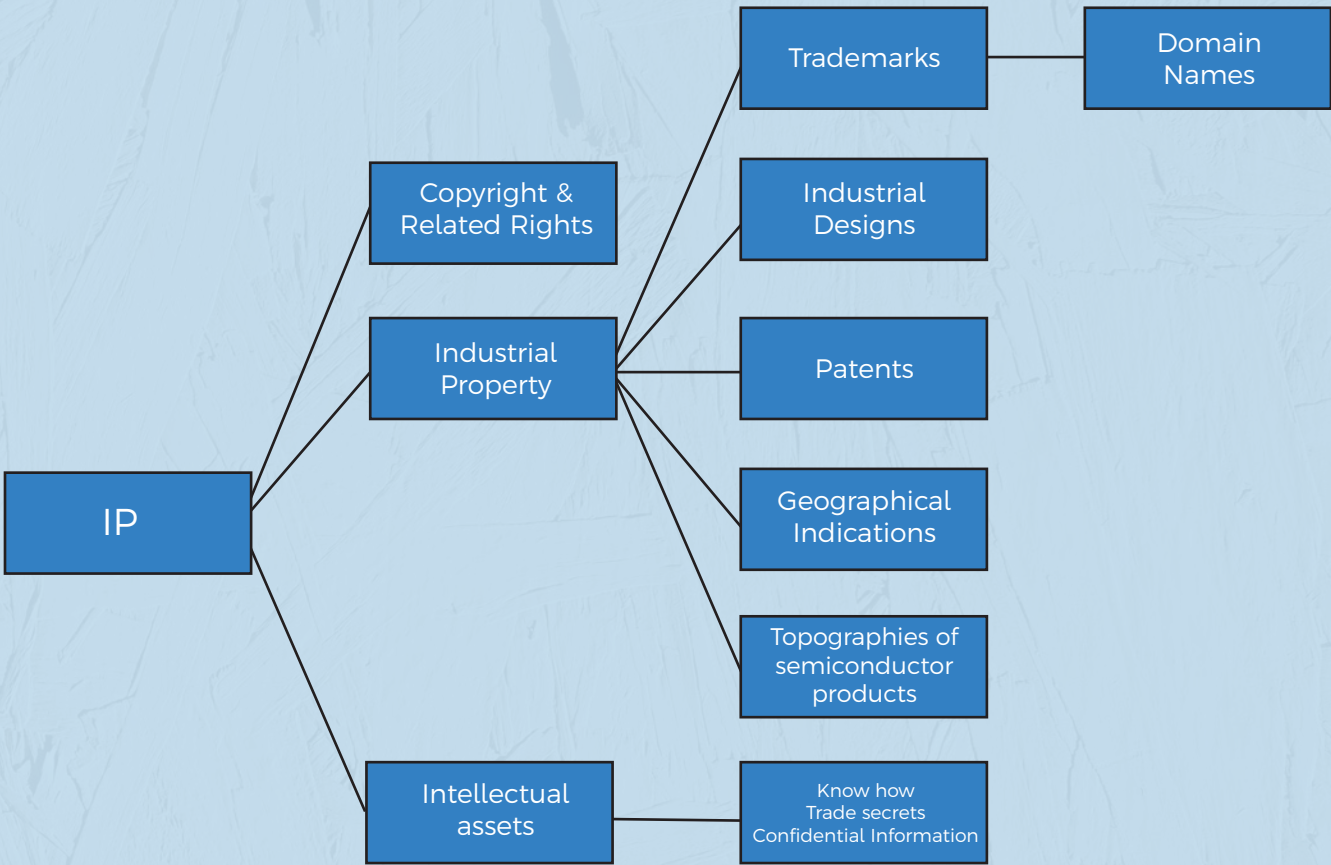
Creations of the human mind are protected by Intellectual Property (IP) Law. The most important feature of IP Law is that it confers a monopolistic power to the rightholders; this means that the rightholders have the right to exclude any third party from using and exploiting the protected creation of mind and decide if and under which circumstances they will authorize the use and exploitation of the work.

Often people confuse the notion of IP Law with Copyright Law. In reality, IP is the general legal term used in the Law to describe Copyright Law and Industrial Property Law. Copyright refers to artistic and literary creations, while industrial property includes trademarks, patents which are granted for inventions, industrial designs (designs), domain names, geographical indications and Protected Designations of Origin (PDO), semiconduc-

tor product topographies and new plant varieties. Commercial and industrial secrets, know-how and unfair competition are also considered to be “satellite” right of Intellectual Property rights, in the sense that although they are not part of IP Law, their subject matter is protected for similar reasons.

IP rights (IPRs) are the rights granted by the legislator to the creators of works, inventions, trademarks, etc. to enable them to exploit their creations exclusively (i.e. excluding third parties who have not been authorized for such use). IPRs, due to their absolute and exclusive nature, are very similar to ownership. Their main feature and their main difference with property is that intellectual property rights (IPRs) are intangible and this is the reason they need to be treated differently than tangible property

Schematically intellectual property law may be presented as follows:



In the present Handbook we will focus and analyse only Copyright.

UNDERSTANDING COPYRIGHT AND RELATED RIGHTS

COPYRIGHT

WHAT IS COPYRIGHT?

Copyright is the protection granted to authors by the law giving them the right to control their creative work. A copyright law is based on the conviction that the authors of creative works deserve reasonable compensation and the right to control the use of their creations.

WHY DO WE NEED COPYRIGHT? - JUSTIFICATION OF COPYRIGHT LAW

Copyright promotes the creation of works in the field of literature, art and science by attributing to authors absolute and exclusive rights on their works for limited time. But why is it so important to attribute economic and moral rights to the author? The answer is that the author must be rewarded for his/her work and people want the author to continue its creative activity. In the long term, it is the culture that is reinforced and in the end - the citizens of the country. At the same time, Copyright encourages investment in artistic creations.

At the same time Copyright has boundaries that guarantee that the public will have access to works and will benefit from them.

Today, due to the fact that Copyright applies to works that affect innovation, it is considered that the exclusive and absolute nature of Copyright encourages natural and legal persons to invest in the creation of innovative works. At the same time, Copyright material, being a property right, it is an asset to the proprietor.

SOME INTERESTING HISTORICAL INFORMATION

Historically, Copyright Law is linked with the technological progress. Indeed, technology has contributed to the establishment of Copyright Law. In addition, in the theory of Copyright Law the invention of typography is considered to be a milestone of the field as it led to the recognition of the so called "privileges" which were granted by the state authorities initially to printers and publishers-booksellers and later to authors. The privileges, however, were in addition to a mechanism of protection of the professional interests of the publishers, primarily a mechanism of censorship.

The whole cultural and philosophical stream of this period, along with the technological achievements, led to the recognition of Copyright Law. Copyright Act of 1709 of the UK, was the first Act ever introducing Copyright Law in the legal system. This law gave authors the exclusive right to publish their books for 21 or 14 years depending on whether or not the books had already been published. The first complete legislation, however, comes in France just after the French Revolution. The Law of 1791 establishes the exclusive right of creators to perform their theatrical and musical works, while the Law of 1793, establishes the exclusive right of reproduction.

COPYRIGHT

WORK

WHAT IS A WORK ?

Copyright protects works of science, in the field of literature, art or science created by an author, a physical person who is at the origin of the work. The protected works are listed in the law as follows:

- (a) literary works (expressed in writing or orally, including computer programs);
- (b) dramatic and dramatico-musical works,
- (c) musical works, with or without words;
- (d) choreographic works and entertainment in dumb show;
- (e) cinematographic works and other audiovisual works;
- (f) works of fine arts (paintings, drawings, sculptures, etc.) ;
- (g) works of architecture;

(h) photographic works, including works expressed by any process analogous to photography;

(i) works of applied art;

(j) maps, plans, sketches and three-dimensional works relating to geography, topography, architecture and other science.

On the other hand, the following are not protected by copyright:

- (a) ideas, procedures, methods of operation or mathematical concepts as such (but only to their original expressions);
- (b) expressions of folklore;
- (c) news of the day, mere facts and data as such (but only to their original presentation); different information that have the character of ordinary media reports can be reproduced only after at least twelve (12) hours have elapsed from their publication.

WHICH ARE THE CONDITIONS FOR THE PROTECTION OF A WORK?

In order for a work to be protected, it must be original, that is, it must present statistical uniqueness and must reflect the personality of its creator. Originality resides in the expression of the author's personality, the intimate link between the author and his work, the personal imprint; the work must present a certain level of creativity.

Simple ideas are not protected; are protected only works that have been formed and externalized (detached from the author's mind), under the condition that they are original. Originality should not be confused with novelty; a painter could paint the same landscape painted by another painter, but what matter is to express himself/herself, set on

the work his/her personal imprint.

What is interesting to note is that a creation that fulfills the criteria above is protected independently of the form it has acquired or its duration in time. That means that a sculpture on ice can be protected by Copyright Law, as long as it fulfils the notion of originality. It is sufficient that the original creation has taken a specific form and has been externalized in the world; its persistence through time is not a condition for its protection.

HOW CAN COPYRIGHT BE OBTAINED? ARE THERE ANY FORMALITIES?

It is a universally accepted principle that the protection of author's rights flows automatically from the act of creation and does not depend on any formality. In that respect copyright differs considerably from other forms of intellectual property protection, such as patents and trademarks. The Berne Convention provides that copyright protection may not be conditioned on compliance with any formality, such as

registration or deposit of copies. Although mandatory registration has been abolished almost everywhere, many national laws provide for a system of voluntary registration of works by the national copyright administration or similar body. Such registration can serve as valuable prima facie evidence in legal disputes.

COPYRIGHT

DO I HAVE TO USE THE SYMBOL ©?

No, the indication © is not necessary for your work to be protected. As mentioned above, a work is protected from the moment of its creation under the condition that it has taken some form and it is original. There are no formalities for the protection, no obligation to register the work in a registry.

The symbol was created by countries where protection depends on compliance with certain formalities, one of which was to include an indication that copyright had been claimed, such as by using the symbol ©. Today, the use of such symbols is no longer a legal requirement. However, this does not mean that you cannot use it. In some cases rightholders include the symbol ©, aiming at emphasizing that the work is protected by Copyright and that all rights are reserved.

WHAT IS AN AUTHOR?

The Berne Convention which the fundamental international treaty for protection of copyright gives member countries flexibility in determining who is considered as an author (and therefore the original copyright holder) of a literary and artistic work. The majority of civil law countries provide that only natural persons can be authors. According to Kosovo's Copyright Law an author is the physical person who has created the work.

Copyright in a work which is the result of joint creative efforts of two or more authors shall belong jointly to such authors (co-authors) regardless of its structure. The right to use the work as a whole belongs to co-authors jointly. Relations between the co-authors are regulated by a contract between them. In the absence of such a contract, the co-authors shall enjoy jointly the copyright in the work, and the corresponding remuneration shall be divided between them, proportionately to their contributions, provided that they can be determined. Where the contributions of the co-authors cannot be determined, the remuneration shall be divided in equal shares.

Presumptions of authorship are provided for in the Copyright Law for persons whose name appears on the work or whose name is mentioned at the moment of disclosure of the work. These persons shall be deemed to be the authors unless proved otherwise.

EMPLOYEES AND COPYRIGHT

Where a work is created by an employee in the execution of his employment duties following the instructions given by his employer, unless otherwise provided by contract, the employer shall be entitled to exercise the economic rights in the work so created, for a period of ten (10) years, from the completion of the work. This would be the case only where the work is used within the field of the employer's normal activities foreseen at the time of the agreement concerning the author's duties.

The rights will be returned to the employed author before the completion of such term, in case of employer's death, respectively in case of employer's liquidation as a legal person. If the employer does not use the property rights on that work, or uses them in a negligible manner, the employed author has the right to ask from the employer to assign those rights to him, against compensation of expenses.

The employed author shall maintain copyright in respect of any work not created in the execution of his employment duties as well as of any use of a work created under his employment duties that is not covered by the employer's normal activities mentioned in paragraph.

WHICH ARE THE AUTHOR'S RIGHTS?

The author enjoys certain rights in relation to the work. These are **a) the personal rights** (also called moral rights) and **b) the property rights (also called economic rights)**.

The personal/moral rights express the connection the author has with his work and they are meant to protect his personality and reputation. Personal rights stay with the author even if he has assigned the exploitation of his work to a third party. In particular, the author has the right to disclose the work or authorize its disclosure in any form (right of disclosure). He has the right to have his authorship of the work recognized (right of authorship), he has the right to the protection of his work against any distortion (right to the integrity of the work) and finally he has the right to revoke his property right assigned to others if there are serious moral reasons for that, on condition that the right holder is compensated for the damage caused by such revocation of right (right of withdrawal).

The property rights offer the author economic benefits as they have commercial value. Through the use of these rights the author is compensated for his work and he is provided with resources to carry on his creative efforts. Unlike the personal rights, the property rights can be transferred and in general can be treated like property. According to the Law on Copyright the author shall have in particular the following exclusive rights to authorize or prohibit the use of his work: (a) right of reproduction, (b) right of distribution, (c) right of rental, d) right of public performance, (e) right of broadcasting, (f) right of communication to the public, (g) right of rebroadcasting, (h) right of cable retransmission, right of public communication by loudspeaker or any other analogous instrument transmitting by signs, sounds or images, the broadcast of the work, (j) right of interactive making available to the public, (k) right of translation, (l) right of adaptation (right to make a derivative work). The authors, in certain cases, shall also have an exclusive right of authorization or prohibition of lending, while in other cases they shall only have a mere right to equitable remuneration for lending.

MORAL RIGHTS	ECONOMIC RIGHTS
right of disclosure	reproduction of his work in whole or in part
right of authorship	distribution of copies of his work by any means
right to the integrity of the work	right of public performance
right of withdrawal	right of broadcasting and rebroadcasting
	right of communication to the public
	right of interactive making available to the public
	right of cable retransmission, right of public communication by loudspeaker or any other analogous instrument transmitting by signs, sounds or images, the broadcast of the work
	translation of the work
	adaptation of the work
	public lending or rental of work

Let's give an example:

Supposing that you have written a song, i.e. a musical work, with lyrics, which is not commissioned, neither created during your work duties or is linked to them.

The moment you complete the work your Copyright is born. You are the author of the work; this authorship right (pertaining in the family of moral rights) gives you the power to exclude anyone else from saying that he/she is the author. You are the one who is going to decide if and when the song will be published (right of disclosure, moral right); no one else has this power but you. The moment your work is disclosed, your economic rights are activated; the economic rights are linked to the exploitation of the work.

To exploit your work you may address to a producer who will publish your work (or you may do it yourself so you will be the producer). The exploitation may include exploitation through a physical carrier or through the Internet. Exploitation as a physical carrier, means that the producer will have to reproduce the work (in several physical carriers) and then distribute these physical carriers, i.e. sell them, to the public. It is possible that physical carriers are used to be rented or lent; these are different economic rights. Distribution, rental and lending presuppose that a reproduction has already taken place; in addition, these rights apply only in the off line environment.

Having released your work, you will certainly opt for its presentation or performance of the work in the public, and in general communication of the work to the public by broadcast. This means that your work will be played by radios, or maybe TV (broadcasting right) and probably will be performed in bars (public performance right). The broadcasting may happen not only through terrestrial signals (traditional TV), but also through satellite or cable, which are different rights.

Taking into consideration that we are living in the Internet era, you will most probably opt for the exploitation of the work over the Internet through third parties' platforms or through your own website. There, your work will be available on demand, meaning that anyone from the public may receive the song whenever he/she wishes to (imagine for example Youtube); in this case you will be making available your song in an interactive way (which is also an economic right). In some cases, the song will be available for downloading; such downloading falls under the reproduction right.

Now, let's suppose that your song is a big success, and an Italian artist wants to translate the lyrics in Italian and adapt the music in a more Italian rhythm. In this case, the artist will have to ask permission for translation and adaptation of your work (both economic rights). If the Italian proceeds without permission, he/she will be infringing your moral and economic rights. This means that if the song is translated and adapted without permission, apart for the economic right (adaptation, translation, reproduction and most probably communication to the public and making available right if the Italian artist publish it on the internet, or broadcasting right if it is played on the TV or radio), the right of integrity will have also be infringed (because the song will be distorted without your permission).

WHICH ARE THE BOUNDARIES OF COPYRIGHT LAW?

Copyright is an absolute and exclusive right, which is characterized by its inherent boundaries: the originality of the work, the limited term of protection of the author's rights and the exceptions and limitations to the author's rights.

In addition, as explained above, Copyright does not protect ideas. This means that two persons may have the same idea to paint a ball full of fruits, but the result will be different. Or, two persons may have the same idea to write a story about five friends who meet regularly and are a bit goofy, but they cannot copy the story of "Friends" without permission of the rightholder. We frequently refer to the expression / idea dichotomy. This means that the idea may be the same for two authors, but the expression of the idea (i.e. the result) will be different. Two painters sitting at the same moment in front of the same landscape: they see the same subject, but they express it differently.

ARE FOREIGNERS AUTHORS PROTECTED IN KOSOVO?

Copyright has a territorial nature. This means that authors are protected in their national territory. However, Kosovo's legislation, following the example of all related International Conventions and the EU legislation, contains a national treatment clause, which means that foreigners and nationals must be treated equally.

CAN ECONOMIC AND MORAL RIGHTS BE TRANSFERRED?

The author may transfer economic rights to a third party.

In our example above, if you address to a production company to publish your song (and proceed with the exploitation), you will need to transfer your rights to the production company.

The economic rights and other rights which run after the death of the author, shall be transferred in accordance with the provisions on inheritance.

Moral rights being personal to the author can never be transferred by assignment or license. However, the consent by an author for performing an act which otherwise may violate his right of integrity shall be regarded as a way of exercising that right, and it shall bind him.

In our example, this means that if you authorize the Italian artist to adapt and translate your work, you cannot claim infringement of your integrity right, because when authorizing the acts you consented to the changes the Italian artist would make on your song.

The right to claim authorship and to be named and the right of integrity moral rights of authors shall be protected without any time limit. After the death of the author, the protection of these rights shall be assumed by the physical person or legal entity entrusted with this by the author in his will; in the absence of such person or legal entity, by the heirs of the authors, and also in the absence of heirs, by any organizations assuming the defense of authors' rights.

WHAT DOES RIGHTHOLDER MEAN?

Rightholder is the person who holds the rights established in Copyright and Related Rights Law. This could be the author or the related rightholder or it could also be the person who acquired legally (contract or heritage) said rights, i.e. the successor.

In our example above, until the moment you transfer your economic rights to the producer you (the author) are the rightholder. Once you transfer them to the producer, the producer becomes the rightholder.

RELATED RIGHTS

WHAT DOES RELATED RIGHTS MEAN?

Apart from copyright, there are some other rights which are related to copyright called related rights because they are associated or ancillary to the rights of an author, but they are not the result of a creation itself. They are connected to copyright in the sense that the contribution of related right-

holders is necessary either to complete the work or to permit the public to reach the work. These right holders are the: performers (e.g. singers, actors), phonogram producers (e.g. record companies) film producers, broadcasting entities (e.g. TV channels) and press publishers.

Let's get back to our example:

For the work to reach the public, it must be sung by a performer/ singer. The music will have to be played by the musicians and the phonogram will be produced by the phonogram producer. The singer, the musician and the producer are related rightholders. The radio will broadcast the song, as the broadcasting organization (again related rightholder).

Thus, the public accesses the work created by the author(s) of the music and the lyrics.

WHICH ARE THE ECONOMIC RIGHTS OF RELATED RIGHTS' RITG HOLDERS?

The related rights' rightholders do not enjoy the same economic rights, although some of them coincide.

Performers are granted the following rights:

(a) fixation of their unfixed performances, (b) reproduction of the fixations of their performances, (c) distribution of the fixations of their performances, (d) rental of the fixations of their performances, (e) lending of the fixations of their performances, (f) broadcasting of their performances, except for the cases where a performance has been previously fixed or broadcast, (g) communication to the public of their performances, except for the cases where a performance has been previously fixed or broadcast, (h) cable retransmission of their performances, (i) interactive making available of the fixations of their performances.

However, when performers participate in a phonogram published for commercial purposes, they cannot authorize or prohibit the communication of the phonogram to the public, or its rental. For these uses of the phonogram, performers may only claim equitable remuneration through a CMO.

Phonogram producers have the exclusive right to allow or prohibit:

(a) reproduction of its phonograms, (b) distribution of its phonograms, (c) rental and public lending of their phonograms, (d) cable retransmission of their phonograms, (e) interactive making available of their phonograms.

When a phonogram is published for commercial purposes, the producer cannot authorize or prohibit the communication of the phonogram to the public. For this use of the phonogram, producers may only claim equitable remuneration through a CMO.

Film producers have the exclusive right to allow or prohibit: (a) reproduction of their films, (b) distribution of their films, (c) rental and public lending of copies of their films, (d) interactive making available to the public of their films.

An audiovisual media service (or broadcasting organization) has the right of:

(a) fixation of their broadcasts, (b) reproduction of the fixations of their broadcasts, (c) distribution of the fixations of their broadcasts, (d) rebroadcasting of their broadcasts, (e) cable retransmission of their broadcasts, (f) communication of their broadcasts to the public in places to the admission to which a charge is made, (g) interactive making available to the public of the fixations of their broadcast.

DO RELATED RIGHTHOLDERS HAVE MORAL RIGHTS?

From the related rightholders, only performers have moral rights. More specifically, performers have the exclusive right a) to have their name, alias or mark shown when their performance is used and b) to oppose any disfiguration, deformity or use of the performance, which would, hurt their honor and fame.

The producers and the broadcasting organisations do not enjoy such moral rights; this is logical because what is protected in the case of producers and broadcasting organisations is their investment. They have no creative contribution. In addition, in most cases they are not physical persons but companies.

CAN A RELATED RIGHTHOLDER TRANSFER HIS/HER RIGHTS?

The related rightholder may transfer economic rights to a third party. Performers' rights can also be inherited, as in the authors' case.

In our example above, until the singer of your song, i.e. the performer will assign the rights to the producer, so that the producer may exploit the musical work.

In some cases, the law foresees that there has been a transfer even when this has not actually happened. This is what the law calls presumption of transfer and is foreseen when for example the performer enters into contract with a producer for a film production.

COMMON PROVISIONS FOR COPYRIGHT AND RELATED RIGHTS

FOR HOW LONG IS COPYRIGHT AND RELATED RIGHTS PROTECTION GRANTED?

The protection of a creative work through copyright does not last forever. Protection granted upon creation of the work, is lasting throughout the lifetime of the author and 70 years after his death. After this period the creative work falls into public domain and can be used by the public in new ways. However, the author's personal rights, those that protect his connection to the work, his personality and reputation are protected without limitation in time. The rights of disclosure and withdrawal run for the life of the author. This limited in time protection is one of the main characteristics of Copyright Law differentiating it from tangible Property which lasts for ever.

Related rights are protected as follows:

the performer's right last 50 years from the performance of the work and 70 years in the case of musical works

the producer of phonograms or audiovisual works expire 70 and 50 years respectively from the fixation of the work

the broadcasting organizations right expire 50 years from the communication of the program.

In our example, this means that if you have written only the lyrics of the song and you have used music created by an author who died in 1950, you do not need authorization by the author. Be careful though because the personal rights persist in time and are protected forever. Therefore, the use of the preexisting music must not be made in an offensive to the author way.

TYPE OF RIGHT	DURATION
Author's economic rights	From creation until 70 years from the author's death
Author's right of paternity and right of integrity	Without limitation in time
Author's rights of disclosure and withdrawal	For the life of the author
Performer of musical works	70 years from the interpretation
Performer of audiovisual works	50 years from the interpretation
Producer of phonograms	70 years from the fixation
Performer of Producer of films musical works	50 years from the fixation
Broadcasting organization	50 years from the communication of the program.

RESPECT OF PREEXISTING WORKS

EXCEPTIONS AND LIMITATIONS

If you are considering to use a preexisting work still under protection in order to create a new one, you should acquire permission from its rightholders. In some cases, however, the law permits the use without the need to have authorization. This is the case when the use falls under an exception or limitation foreseen by the Law.

More specifically, in order to find a fair balance between the interests of the public in access to information and knowledge and the exclusive rights of the author, copyright protection is subject to limitations and exceptions.

The two basic forms of exceptions and limitations are:

free use, i.e. use the work without authorization and compensation; and

non-voluntary or compulsory licenses, which means that a compensation is paid to the rightholder for non-authorized exploitation.

Non voluntary or compulsory license is the case of the private use exception/limitation of copyrighted work, such as the home recording or reproduction for private use, for which no authorization is given. Where this principle applies, authors and other right holders receive usually a fair or equitable remuneration which is based on a levy on blank recording devices or equipment distributed to authors and right holders through collective management societies.

Exceptions and limitations are only applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holder. This is the principle of the three-step test provided also by the Berne Convention the TRIPS Agreement and the WIPO Internet Treaties, as well as the Beijing and Marrakesh Treaties.

PREEXISTING
WORKS

The Kosovo's Copyright Law provides in certain cases for free use of a work which means the use of a work without the consent of the author and without remuneration but with obligatory mention of the author's name and the origin of the work, provided it does not prejudice the normal exploitation of the work and legitimate interests of the author. The permitted free uses concern: (a) short quotations in another work for purposes such as criticism or review, (b) use of works by way of illustration in publications, broadcast or sound or visual recordings for teaching or scientific research at all levels, (c) use of published works for public performance in school celebrations on condition that the performers are not compensated for such interpretation, (d) the digital use of works and other subject matter, on certain conditions, (e) reproduction and distribution by the press, broadcasting, communication to the public or interactive making available to the public of published articles on current economic, political or religious topics or of broadcast works or other subject matter of the same character, (f) use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose, (g) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the informatory purpose, (h) use for the purposes of public security or to ensure the proper performance and reporting of parliamentary, administrative or judiciary proceedings, (i) ephemeral recordings of works made by broadcasting organizations by means of their own facilities and for their own broadcasts on the understanding that such recordings shall be erased or destroyed after twelve (12) months, with the exception of those

that have exceptional documentary character, which may be preserved in official State archives, (j) use, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability, (k) use during religious celebrations or official celebrations organized by a public authority, (l) use of works, such as works of architecture or sculpture, made to be located permanently in public places, (m) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use, (n) use for the purpose of caricature or parody, (o) use in connection with the demonstration or repair of equipment, (p) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building, (q) use by communication or interactive making available to the public, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments which are accessible to the public, of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections, (r) to make copies of any works or other subject matter that are permanently in their collections, in any format or medium, for purposes of preservation of such works or other subject matter and to the extent necessary for such preservation, for cultural heritage institutions.

It is also permitted without the consent of the author or other holder of copyright, but against the payment of equitable remuneration the reproduction of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons.

Temporary acts of reproduction shall be permitted without the consent of the author or other owner of copyright and without the payment of remuneration provided that they correspond to all of the following criteria: (a) they are transient or incidental, (b) they are integral and essential part of a technological process, (c) their sole purpose is to enable a transmission in a network between third parties by an intermediary; or a lawful use of a work, and (d) they have no independent economic significance.

The reproduction of a lawfully published work is permitted without the consent of the author, but against the payment of an equitable remuneration, if it is made by a natural person for his own exclusive personal and private use and for purposes that are neither directly nor indirectly commercial.

Reprographic reproduction by means of photocopying is also provided for in the law regarding specific cases, such as by libraries and archives, educational and cultural institutions for the purpose or restoring or substituting the lost or damaged copies, for a library or archive that is not for direct or indirect economic or commercial advantage, to meet the needs of physical persons who are to use the copy so obtained for the purpose of private study or non-commercial research; for teaching establishment, in a number copies needed for illustration in classrooms.

Text and data mining for the purposes of scientific research or on condition that the use of works and other subject matter referred to in that paragraph has not been expressly reserved by their right-holders in an appropriate manner, such as machine-readable means in the case

of content made publicly available online is another permissible exception.

Finally, the Copyright Law provides for certain permitted uses of orphan works for publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations, established in the Republic of Kosovo, in order to achieve aims related to their public-interest missions as well as for use of out-of-commerce works and other subject matter by cultural heritage institutions.

Persons with a visual impairment or reading disability may reproduce, for their personal use, published literary works which are available in text or in audio format as well as graphic recordings of musical works, or may have them reproduced, in order that they may be converted into an accessible format. This authorisation also encompasses illustrations of all kinds which are contained within literary or musical works. Copies may only be produced of works to which persons with a visual impairment or reading disability have lawful access.

No acts shall require the authorization by the author or other owner of copyright where it is necessary for the use of a computer program or a database by the lawful acquirer thereof, in accordance with its intended purpose, including for error correction. Decompilation of computer programs is also allowed on certain conditions.

LAWFUL INTEGRATIONS UNDER FREE LICENSE

OPEN SOURCE CODE

Many developers are using open source software, meaning software that is offered for use for free to develop faster their systems.

Open source licenses were established by the free software world, but they are spreading nowadays in other areas. They are subject to the same conditions of validity as any lawful assignment of rights and create legal obligations between the parties. Unlike traditional copyright licenses that restrict the use of software, open licenses allow software to be distributed to, used and modified by as many people as possible so that everyone can adapt the software to their specific needs and make corrections himself.

The use of open source software is licensed under specific terms. Licenses are categorized into copyleft or permissive licenses. Both copyleft and permissive licenses allow users to freely copy, distribute, and change the software that use them; such open source programs are still under Copyright law; it is their contractual terms that make them different from traditional Copyright (no exclusivity etc).

Source code licensed with Copyleft licenses

(such as GLP etc), obliges developers to use in their program (which incorporates the initial Copyleft source code) the same license; this means that the new program will be made available to third parties to copy, distribute, and modify it. Therefore, no property rights may be claimed on the newly created software which includes the preexisting open source code made available with Copyleft License.

The validity of open source licenses was initially confirmed by the Munich Court, which ruled in 2004 that the distribution of software in violation of the terms of the General Public License constituted an infringement of copyright. The decision of the Frankfurt Court of September 6, 2006 moved in the same direction. After all source code distributed with open source licenses still falls under Copyright. The clauses of the licenses under which the source code is made available, either Copyleft or permissive, should be respected. If the developer does not respect the license set for the use of the open source code there is infringement of Copyright law (contractual Copyright).

CREATIVE COMMONS – CC

Licenses of this type move in the same direction as “open” licenses. They are model contracts that aim to permit the free use of the works on the Internet, bearing the symbol CC. These licenses allow the user proceed with specific uses of the work, following the terms set by the rightholders. Users do not have to request permission for the use of CC works. The validity of CC licenses has been confirmed by Spanish and Dutch courts.

The aim of CC is to create a new conventional public sector, the creation of common goods based on the licenses provided by the authors themselves. In this way the content of the pre-existing works can be accessed and used by everyone, end user or authors permitting the creation of derivative works within the remix culture. These licenses are considered more liberal and provide flexibility and aim at the mass dissemination and circulation of works.

CC licenses are the intermediate solution: copyrights are protected, the distribution of works and their re-use is allowed but only within the limits chosen by the creator himself. It is therefore another individual exercise of the right based on the logic of sharing and reusing works and not on the logic of absolute control of access to them.

CC are legally binding contracts; they are irrevocable and of world power. Each license consists of three functional levels: a) readable by everyone that contains a summary of the basic terms of the license (Commons Deed), b) legal text that includes the contractual terms of the license (Legal Code) and c) machine-form that contains metadata and enables the identification of works that are digitally available with CC licenses from search engines (Meta Data).

There are six different license types, listed from most to least permissive here:



CC BY: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use.

CC BY includes the following elements:



BY Credit must be given to the creator



CC BY-SA: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format, so long as attribution is given to the creator. The license allows for commercial use. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.

CC BY includes the following elements:



BY Credit must be given to the creator



SA Adaptations must be shared under the same terms



CC BY-NC: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator.



BY Credit must be given to the creator






NC Only noncommercial uses of the work are permitted





CC BY-NC-SA: This license allows reusers to distribute, remix, adapt, and build upon the material in any medium or format for noncommercial purposes only, and only so long as attribution is given to the creator. If you remix, adapt, or build upon the material, you must license the modified material under identical terms.

CC BY-NC-SA includes the following elements:

- BY  Credit must be given to the creator
- NC  Only noncommercial uses of the work are permitted
- SA  Adaptations must be shared under the same terms






- BY  Credit must be given to the creator
- ND  No derivatives or adaptations of the work are permitted



CC BY-NC-ND: This license allows reusers to copy and distribute the material in any medium or format in unadapted form only, for noncommercial purposes only, and only so long as attribution is given to the creator.

CC BY-NC-SA includes the following elements:

- BY  Credit must be given to the creator
- NC  Only noncommercial uses of the work are permitted
- ND  No derivatives or adaptations of the work are permitted

WHAT IF I USE A WORK THAT I FOUND ON THE INTERNET? ISN'T THIS FREE OF RIGHTS?

You should not consider that works found on the Internet (for example a photograph) can be used without authorization. If there is no indication in relation to the use of the work, you should not use it. Check the terms of use of the site to examine if there is such possibility. If you take the work and use it without authorization, the rightholder may appear and claim damages for infringement. Only if there is an indication like CC or of any kind describing the possible use, should you use the work, respecting the specific conditions set by the rightholders. You should always be cautious when using works from the Internet, because, even there is an indication of permission, you cannot be sure that the one who has set the conditions for the use (contract) is the rightholder.

In our example, let's suppose that you want to disseminate your musical work through your site. Does this mean that anyone can take it from your site and use it, for example in a commercial? Of course not. You need to authorize the use. Or in reverse, let's suppose that you read on a platform a poem that you loved, and you want to make music for it. You cannot use the lyrics without authorization by the author, you need to reach him/her and ask permission.

HOW TO MONETISE YOUR RIGHTS?

One of the fundamental elements of Copyright, is the attribution of economic rights to authors which permit them to exploit their works either individually or by authorizing third parties to do so. Authors may transfer their economic rights to individuals or companies able to market their works in return for payment. Payments are referred to as royalties. Transfer of copyright may take the form of assignment or license. Under an assignment, the author transfers the

right to authorize or prohibit certain acts covered by the economic rights. In case of assignment the person to whom the rights are assigned becomes the new owner of copyright. Licensing means that the author retains ownership but authorizes a third person to carry out certain acts covered by his economic rights generally for specific period of time and for a specific person. Licensing may also take the form of collective management of rights.

COLLECTIVE MANAGEMENT

Though individual management is a possibility, some economical rights cannot be managed individually; for some forms of exploitation, it is impossible, in practice, to organize a direct contractual relationship between the beneficiaries and the user, because of the large quantity and dispersion of rightsholders and users, and the very short interval between the decision to use a work and the actual use, is not allowing the user to identify the beneficiaries and to conclude an agreement with them. Among the forms of exploitation, corresponding to the economic rights of the authors and related rights owners, with the above-mentioned characteristics are:

- broadcasting and public performance of musical works,
- cable retransmission of works, performances and other related products,
- copying for private use of musical, audio-visual and sound works or related rights products, (phonograms, videograms etc.),
- reprography and
- public lending.

In these cases, collective management proves to be the best way and, in fact, the only possible way to safeguard rightsholders rights and permit the effective exploitation of the economic rights. In such a system, rights holders authorize or grant a mandate to CMOs in order to administer and manage their rights. Thus, collective management should include among other activities: negotiations with users for establishing tariffs, granting users authorizations for the use of the works and other related products, monitoring the use of the works and other related products or the use of the economic rights managed by the CMOs for their members and rightsholders, assuring the fulfilling of these rights, collect the royalties from the users, distribute and pay the royalties to rightsholders, members of CMOs.

Taking into consideration that the rightsholders have different needs and face different challenges depending on their field of activity (for example music or audio-visual), CMOs represent rightsholders of specific categories of works. Furthermore, usually CMOs represent one specific category of rightsholders (for example authors or performers or producers), while in some cases specific economical rights (for example only public performance or only reproduction right for specific category of works).

On July 12th, 2012 a very significant step for the protection of copyright was undertaken in Kosovo. Two associations for collective administration of copyright, APIK - for the field of music and VAPIK-for the audiovisual field, have already obtained the license from the OCRR, in order to administrate these rights, by negotiating with the users.

BENEFITS OF COLLECTIVE MANAGEMENT

In order to establish a well-functioning copyright environment, the legislation must provide users easy access to obtain a license for copyright material. Collective management is justified where getting licenses due to the number and other circumstances of uses, is impossible or impracticable, such as public performance or broadcasting. In particular, it will be impossible for the radio station to negotiate directly with all involved composers all around the world. It benefits the radio stations because they can obtain worldwide license at one single point. For the composer it is impossible to monitor the airplay all over the world of his or hers hit-melody.

So in case of mass uses like broadcasting, individual rights management will be both costly and almost impossible. CMOs establish user-friendly licensing systems – easy access to world-wide repertoire, convenience – at a fair price. They inform of the value of music and films the customers and provide services to the customers in relation to usage of music and films, in bars, restaurants, hotels TV and radio stations.

Collective management is more often considered as a means for securing that the rights holders receive the economic benefit for their creative work intended by the legislation.

Let's go back to our example:

You are the author of a musical work (music and lyrics). If you become a member of a CMO, you will be able to receive royalties/remunerations whenever your music is played, for example, in the bars or on television/radio or is rented or lending etc. The CMOs have such mechanisms that can lead to the collection of your royalties for uses that you cannot control by yourself.

HOW COLLECTIVE MANAGEMENT OF THE RIGHTS WORKS?

In case of collective management, the right holder still owns the copyright but the management is transferred to another legal entity, a non-profit or not for profit organization. The CMO does not negotiate the royalty on an individual basis, but license according to a joint tariff for all right holders of the same category. The CMO authorizes the use by way of a license covering all right holders (a

blanket license) and distributes the incoming royalty individually to the right holders. The right holder no longer has a direct claim against the individual user, but the right holder has a claim against the CMO for a payment. The distribution rules shall reflect the specific individual rights being used and paid for in order for an individual payment to each right holder.

The seven steps of collective management:

The right holders transfer their rights to or authorize the CMO to manage their rights under the national legislation

The CMO register the right holders and their works and performances in databases in order to establish the basis for individual distribution

The CMO negotiates the payment with the users and license the usage

The CMO collects the payments on behalf of the right holders

The CMO monitors the use of the works

The CMO distributes individually the income on basis of the actual use of the works and pays out to the individual right holder in accordance with the distribution plan

The CMO signs reciprocal agreements with similar CMOs abroad and transfer payments across the borders.

HOW COLLECTIVE MANAGEMENT OF THE RIGHTS WORKS?

Basic collective management of related rights is in principle quite simple but complex in practice:

The CMO register data from members on their sound recordings;

The CMO negotiate tariffs and collect remuneration from users such as radio and TV stations, hotels, restaurants, fitness centers etc.;

The CMO receives reports from users on the broadcast and public performance of recorded music;

And finally the CMO distributes the incoming royalties – after deducting the costs – to the individual right holders based on information from the playlists from the users.

Thus, a database with recording information on all performers and record producers together with distribution software connecting the incoming royalties, the user reports and the database is the backbone of any CMO collecting and distributing remuneration for related rights. “Data is King” and first priority for the CMO. Second priority is connecting with committed volunteers between the performers and record producers and appointing a famous performer to front the project.

Third priority is developing proper communication strategies and arise awareness on the rights of performers and record producers.

The success criteria for a new CMO are the actual payment through to national and foreign right holders. The number of members is important to have support from many right holders as well as the increase in collections. The actual individual distribution based on the database is the proof of the proper performance of the CMO.

WHAT ARE THE USERS AND THEIR OBLIGATIONS?

Users are physical or legal persons, businesses that use and exploit a work in any possible way. The users establish agreements with the Collective Management Organisations, in case of a public performance of the work. When a copyright protected creative work is used or copied without the permission of the rights holder we call this action copyright infringement.

WHAT IF THE USERS AND COLLECTIVE MANAGEMENT ORGANISATIONS DISAGREE ON THE TARIFFS?

Collective associations and representatives of users may propose on a basis of a mediation agreement, mediation in a dispute concerning the agreement for the definition of the general fees. The parties shall jointly choose the mediator from the list of mediators appointed by the Office of Copyright and Related Rights.

GENERAL PRINCIPLES FOR DEFINING WHETHER A TARIFF IS REASONABLE

There are two basic forms of tariffs:

A percentage of the receipts from the use of the works or other subject matter. It mainly applies to uses related to the main activities of users, such as theatre performances, concerts, publications.

A lump sum payment is typical for uses not belonging to the users' principal activities.

For tariffs expressed in percentages, internationally accepted standards exist (usually 10% rule). Lump sums are fixed on the basis of specific factors which differ from country to country but there are generally accepted principles of calculation, except reprography and private copying levies.

SUPERVISION OF COLLECTIVE MANAGEMENT ORGANISATIONS

The supervision of the collecting societies in Kosovo is one of the competencies of the Office of Copyright and Related Rights. The supervision of collecting societies implies the control of CMOs at the stage of constitution and at the stage of functioning. The administrative control of the operations of CMOs is justified by the protection of general interest.

For the purposes of such supervision, collective management organizations shall be submitted to the Office: their statutes and regulations, as well as any amendments thereof; their bilateral and multilateral contracts concluded with foreign collective management organizations; information on the persons empowered to represent them; decisions of their highest governing bodies (such as their General Assembly); their annual report and balance; reports of both internal and external auditing of their activities; any other documents indispensable to verify the compliance of the activities of the organizations with this Law and other relevant laws of the Republic of Kosovo or their own statutes.

The Office shall review the activities of collective management organizations once a year. However, the Office may also carry out a specific review between two regular annual reviews if it obtains information – from the members of the organization, from other owners of rights, from users or from any other relevant sources – on the basis of which reasonable doubts may emerge whether the activities of the organization is in accordance with the provisions of this Law and other relevant laws of the Republic of Kosovo or its own statutes.

The Office shall prepare a report of the results of each review and the highest governing body of the collective management organization (such as its General Assembly) shall be obligated to include the report on the agenda of its next session, to discuss it, and to inform the Office about outcome of the discussion and any measures taken.

Where the Office finds that the activities of a collective management organization are not in accordance with the provisions of this Law and other relevant laws of the Republic of Kosovo, or of its own statutes, it may call upon the organization to bring its activities in accordance with those provisions determining a reasonable deadline for this. Where the organization does not fulfill this obligation, the Office, depending on the circumstances, may suspend or revoke the accreditation granted to the collective management organization.

In practice right holders do not have any other choice than entrusting the management of their rights to CMOs. If CMOs do not operate properly, rights are neglected and restricted in practice. It is justified to introduce legal provisions that ensure the proper operation of CMOs. The special provisions make the establishment of CMOs conditional upon the approval of the competent authority.

(a) its membership, or the circle of those owners of rights who otherwise have entrusted it with management of rights, extends to a substantial part of owners of rights, and any owner of rights in the same category may join it in accordance with its statutes;

(b) it has entered into reciprocal representation agreements with organizations representing foreign owners of rights in the same category, or at least it makes all the necessary efforts to conclude such agreements;

(c) it has the capacity to manage the economic right concerned, including appropriate staff and technical equipment;

(d) it has at its disposal adequate mechanisms for the collection, distribution and payment of remuneration;

(e) it guarantees equal treatment both to owners of rights and to users where the objective conditions of the treatment are the same;

(f) its activities do not extend to any commercial or other profit-making purposes;

(g) its statute and other regulations are in accordance with the provisions of this Law and other relevant laws of the Republic of Kosovo.

HOW TO MAKE YOUR RIGHTS RESPECTED?

Collective associations and representatives of users may propose on a basis of a mediation agreement, mediation in a dispute concerning the agreement for the definition of the general fees. The parties shall jointly choose the mediator from the list of mediators appointed by the Office of Copyright and Related Rights.

Let's suppose in our example that your song (of which you are the rightsholder) is used without authorization for an advertisement of let's say yogurt and the advertisement is of bad taste. You feel insulted by this use. You need to act expeditiously to stop the infringement, in order to stop the infringement and avoid any further harm. Imagine now that you have agreed with another advertising company the use of your song for another product, let's say a very trendy soda, the concept of which you have approved. If you don't act expeditiously it is highly possible that this approved use will never happen.

The following paragraphs summarize some of the enforcement provisions found in Kosovo's national legislation. They may be divided into the following categories: civil remedies; criminal sanctions; border measures; and measures, remedies and sanctions against abuses in respect of technical devices.

CIVIL REMEDIES INCLUDE:

- Evidence: production of evidence by the opposing party
- Injunctions for party to desist from infringement
- Damages must be adequate to compensate for injury
- Disposal of infringing goods from the channels of commerce
- Orders to infringers to inform about channels of distribution of infringing goods

In our example above, you (i.e. the rightsholder) may claim damages for the injury caused or even to stop the use of the work within the advertisement.

PROVISIONAL MEASURES MUST BE AVAILABLE:

- To prevent an infringement from occurring and in particular to prevent the entry into channels of commerce of infringing goods
- To preserve relevant evidence in regard to the alleged infringement
- Must be available *inaudita altere parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

In our example above, you (i.e. the rightsholder) needs to move fast, without any delays so that the song stops being used in the advertisement, otherwise you may lose the agreement made with the other advertising company. For this reason, you will follow the *inaudita altere parte* procedure.

Beneficiaries of sanctions and remedies are the original holders of intellectual property rights, licensees and successors in title, collecting societies and professional defense bodies.

Criminal sanctions are intended to punish those who carry out infringements of particular gravity, such as willful acts of piracy committed on a commercial scale, and so to deter further infringement. The purpose of punishment is achieved through fines and prison sentences consistent with the level of penalties applied for crimes of corresponding seriousness, particularly for repeat offenses. Deterrence is also served, as in civil proceedings, by orders for the seizure and destruction of infringing goods and of materials and equipment used predominantly to commit the offense.

Border measures are different from the enforcement measures described so far in that they involve action by customs authorities. Border measures allow right owners to request that customs authorities suspend the release into circulation of goods suspected of infringing copyright. This is intended to give right owners a reasonable time to commence judicial proceedings against the suspected infringer, without the risk that the alleged infringing goods will disappear into circulation after customs clearance. Typically, right owners must meet certain requirements such as to: (a) satisfy the customs au-

thorities that there is prima facie evidence of infringement; (b) provide a detailed description of the goods so that they can be recognized; and (c) provide security to indemnify the importer, the owner of the goods and the customs authorities in case the goods are found to be non-infringing. Following the detention of the goods by Customs, the right holder will typically apply to the court for provisional measures to prevent the release of the goods into the market, pending a final decision on the claim of infringement.

The final category of enforcement provisions includes **measures, remedies and sanctions against abuses in respect of technical means, also referred to as technological protection measures (TPMs)**, which have achieved greater importance since the advent of digital technologies. In certain cases, the only practical means of preventing copying is through so-called copy-protection or copy-management systems. These use technical devices that either entirely prevent copying or make the quality of copies so poor as to be unusable. Technical means are also used to prevent the reception of encrypted commercial television programs except with the use of decoders. However, it is technically possible to manufacture devices that circumvent such copy-protection and encryption systems. These enforcement provisions are intended to prevent the manufacture, im-

portation and distribution of such devices. The WCT includes provisions to this effect, as well as provisions to prevent the unauthorized removal or alteration of electronic rights management information and the dissemination of copies of works from which such information has been removed. **Rights management** information may identify the author or right owner, or contain data about the terms and conditions of use of the work. Removing the information could thus hinder the detection of infringements or result in the distortion of computerized rights management or fee-distribution systems. National laws may also include exemptions from the application of these measures in certain circumstances, such as to give effect to copyright limitations and exceptions provided in the national law.

TEST YOUR KNOWLEDGE ON COPYRIGHT AND RELATED RIGHTS LAW

Copyright is a Law that:

- a) regulates the protection of inventions
- b) regulates the protection of the author
- c) regulates the rights of the Companies on their investment

Copyright Law protects:

- a) ideas underlying a work
- b) original works expressed in any form
- c) what Art tells us that is worthy of protection

An ice sculpture:

- a) cannot be protected even if it original because it melts
- b) is protected on the condition that it is original

An oral work:

- a) cannot be protected by Copyright even if it is original because it is not incorporated in a physical carrier
- b) is protected by Copyright if it is original

According to the national Copyright Law, are protected the following types of works:

- a) Literary and scientific works (literature, poetry, educational books, articles, lyrics, software, etc.)
- b) works of fine arts (painting, sculpture, photography, drawings, maps, cartoons, architecture etc.)
- c) Musical works (music sheets, soundtracks etc.)
- d) dramatic works (scenarios, theatrical works etc.)
- e) all the above

Is not considered as a work:

- a) news and information of media of ordinary reporting
- b) an opera
- c) architectural works

According to the dominant opinion in the doctrine and jurisprudence in EU Member States, cooking recipes:

- a) are copyrighted if they are original
- b) cannot be protected by copyright because they are a know-how

Presentation of a dish:

- a) is copyrighted, if it is original
- b) cannot be protected by copyright because purpose it is to be consumed.



True story: A monkey steals the camera of a photographer and start shooting himself; he is actually taking a selfie. The picture is beautiful and is published on the Internet.

The rightholder of Copyright on the picture is:

- a) the monkey
- b) the photographer because it is his camera
- c) No one. The picture is not protected even if it original because only natural persons (and not animals or robots) can be authors.

Authors rights last:

- a) for the lifetime of the author; then they fall into the public domain
- b) from the moment of the creation of the work and 50 years after the author's death
- c) from the moment of the creation of the work and 50 years after the author's death

Which of the following rights is not part of the economic rights of the author but of his moral rights:

- a) reproduction right
- b) right of communication to the public
- c) integrity rights
- d) distribution right

If you have published the work that you have created on your website:

- a) anyone can use the work for any reason because by uploading it on the Internet you resigned from your rights forever
- b) anyone can use the work. Uploading it on the Internet does not mean that you resigned from my rights
- c) then it falls into the public domain, so it stops being protected

Right or wrong?

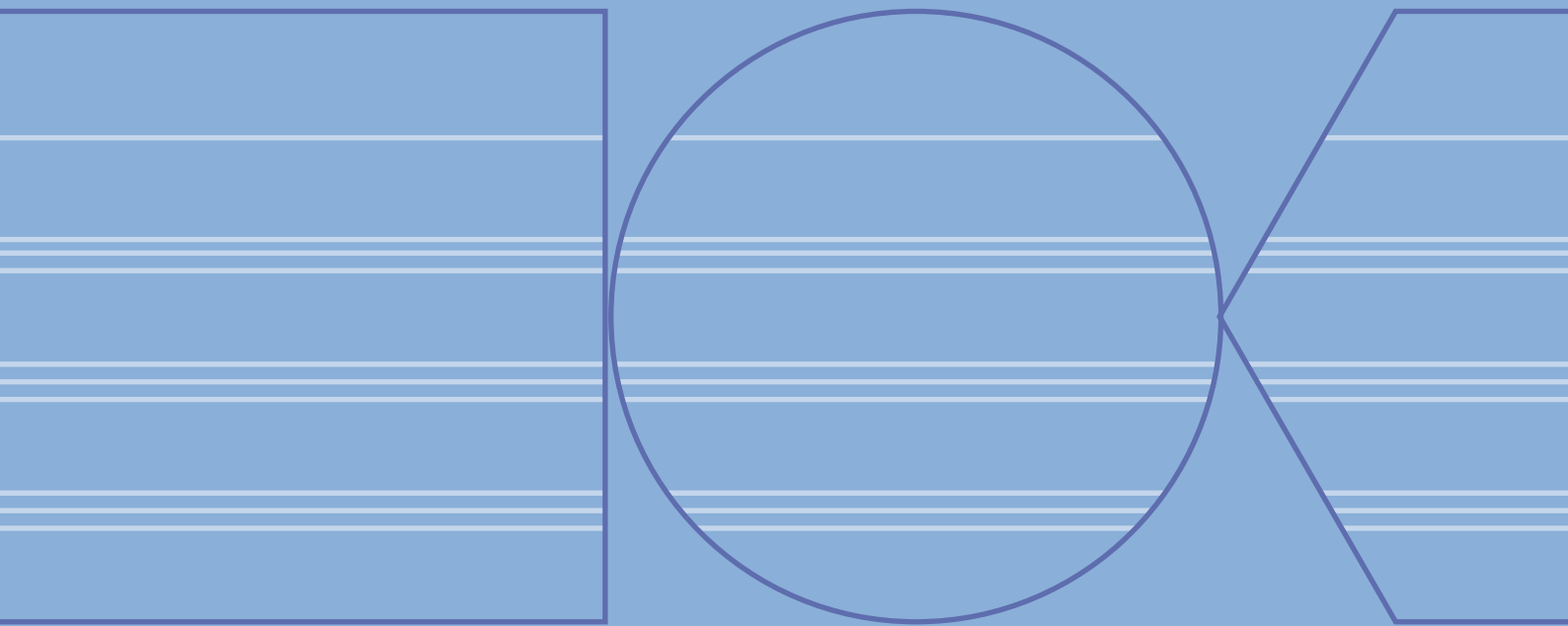
	Right	Wrong
The author is obliged to refer to his name		
The author may not use a pseudonym		
A work may be anonymous		
Private copying is permitted only if the copy is made for personal use.		

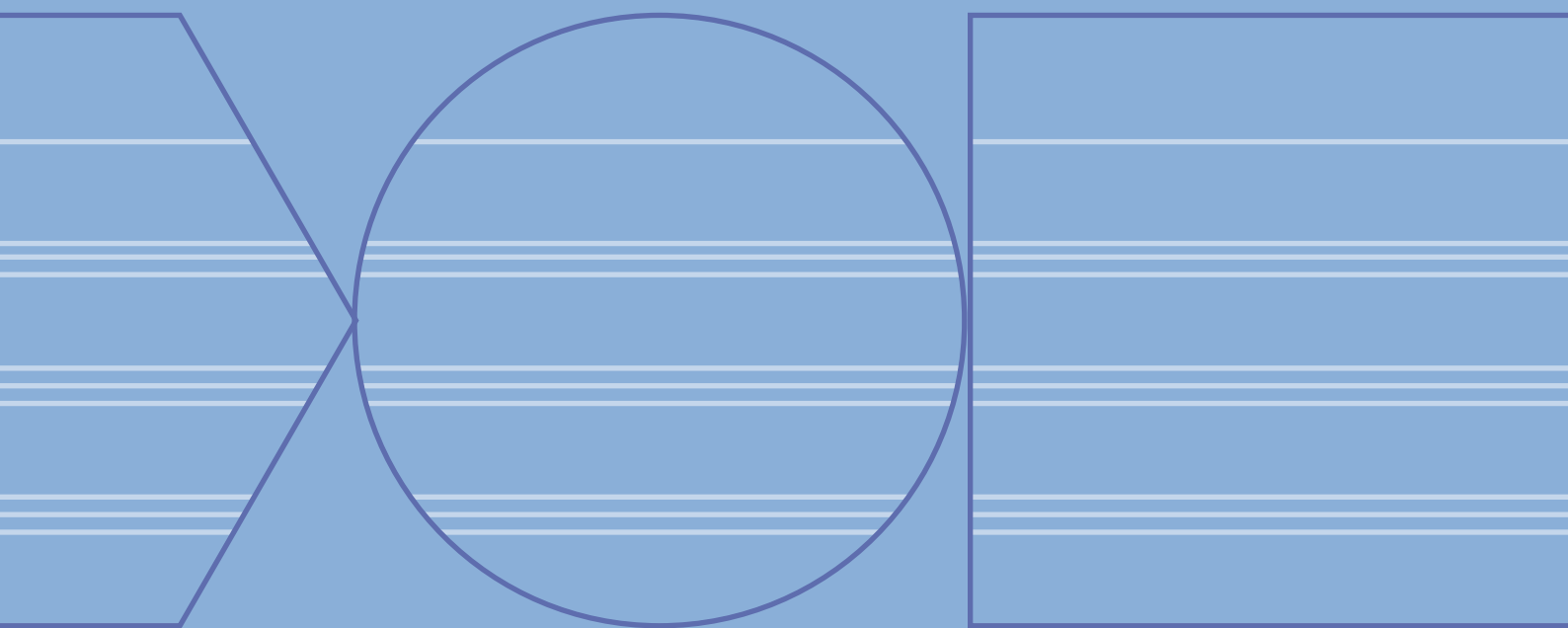
A Copyright Exceptions

- a) withdraws any Copyright
- b) permits the use of the work only if the rightholder authorizes you
- c) permits the use of the work without authorization

A musical work is likely to be protected:

- a) by copyright only
- b) there are no rights on a musical works
- c) by copyright and related rights of performers and producers of phonograms





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