

Copyright System

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ABSTRACT: The protection of copyright and related rights is done through a series of administrative, civil, and criminal law means. The appearance of a law, in accordance with the relevant international legislation, allowed entry into legality in this field as well, due to the changes in technology that required this. Also, the regulation of related rights was another step in creating the legislative framework necessary to defend these rights.

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Introduction

Intellectual property is an indicator that reveals very exactly the evolution of society, and intellectual property law manages to illustrate perhaps the best way in which the rule of law keeps pace with social realities. Technological progress by providing new forms of expression, new categories of works and new needs appear from a legal point of view, in order to protect them. In the chronological axis of the development of the copyright system, it is obvious that we can record new inventions that have revolutionized society that as a result of technological progress, in this sense, we can enumerate without hesitation the appearance of printing, cameras, film, etc.

These forms resulting from the development of technology are assimilated in the daily life of the individual and meet certain needs but their novelty makes it very difficult to assess in the future the possible problems that may arise, especially since the speed of technological development is a feature of nowadays (Simler 2010).

The copyright system is an important method of protection that, initially, had as object an activity or a form that presupposed a minimum degree of creativity or originality, in the system of continental law, respectively in the common law system. Over time, there has been a liberalization in the sense that the object of copyright protection can be directed from the idea of creativity even to utility. Moreover, copyright no longer ensures only the protection of creations that can be incorporated into a material medium, but it is now extended to intangible assets. The traditional concept of copyright revolves around the idea of creativity or around novelty from an artistic point of view, but today it also focuses on new information, without satisfying any artistic requirement.

Balancing the beginning of the protection system with the current reality, we notice that today we have to deal more and more with the functional nature of the object of copyright protection, as technology comes with new rules; the concept of creation is rather replaced or at least it is added; the concept of the new product - probably a more commercial approach. Hence a conversion and a legal reconsideration of the effects of copyright, both patrimonial and non-patrimonial (Puttemans 2000).

The normative system and the literature adapt and try to answer the new problems, but in this situation, we can remember a proverbial statement expressed in the doctrine, according to which where technology poses problems, probably all technology must find solutions, but must not we overlook the important role of intellectual property law.

The notion of multimedia attracts many discussions due to its hybrid character in terms of protection specific to intellectual property. A multimedia product is often a mixture of other works, creations or information pre-existing its realization. Given that at the international level we distinguish in two categories the protection of intellectual property

rights (on the one hand, we have the Paris Convention of 1883 on the Protection of Industrial Property and on the other hand the Berne Convention on the protection of literary and artistic works), the placement of these categories of works between is quite difficult and must be done carefully (Picard 1928).

The term multimedia has various definitions, ranging from communication systems, the Internet and virtual reality to television or simple computer games. But what particularizes all these elements and being the starting point in defining the concept of multimedia is the fact that it involves an amalgam of various works or information meant to be a single creation, in a single environment. The information contained is digitized and may, most importantly, involve the possibility of a dialogue between a system and its user. Literally, multimedia presupposes the existence of several means of communication, and the term began to be used around 1980, referring to companies that printed various materials or advertised.

Combining texts, sounds, images and other various formats, multimedia creates a unique source of information in a single integrated system, so legal protection is more difficult to establish. It was noted that there are several options in this regard:

- Protection of the content of a multimedia product;
- The projection of the multimedia product itself;
- Protection of the technical support, of the base in which it is incorporated.

In practice, however, it is very difficult to assess which of the three variants to apply because, for example, a multimedia product is not always a computer program, but can only be used by using such a program. Hence the need for legal flexibility, because content protection has an effect on the product and vice versa, product protection has an effect on the content (Simler 2010).

In the first situation, content protection it is about the protection of some pre-existing elements or of some works whose existence is justified only by creating the multimedia product. Since the components may have an independent existence, they may benefit individually from copyright protection, patenting or any other available means conferred by the intellectual or industrial property, as the case may be. This does not exclude the possibility of protection from other branches of law, such as contractual protection or by incurring tortious civil liability.

The second situation - the protection of the product itself - implies that the components are combined in a digital format with an interactive potential, without assimilating individual rights. This creates a new right of protection, which serves a new function, as the product has autonomous value (Cremona 2001).

The third situation refers to the material or technical support of the product:

- a) A platform that is divided into:
 - Hardware;
 - Software, operating system that is used to use the multimedia application on a particular hardware support (e.g., Windows XP).
- b) The program that creates the multimedia application. By using this program, the multimedia application is born but it is not assimilated to the newly obtained product.
- c) The driver that offers the user to access and operate with the information available in the content of the multimedia product.
- d) The distribution of the product which can take either a physical or online format: C.D.-ROM, U.S.B. Drive or communication and information transmission networks.

The situation of the participants in the creation of a multimedia product also requires certain clarifications. Usually these are:

- The authors, who are either authors of pre-existing works who have agreed to include their works in the multimedia product or persons who have created new products either independently or on the basis of a contract;

- Copyright holders, on those individual works created by other persons. They can be individuals or legal entities and do not have the moral rights of copyright;
- The manufacturer (or provider of a multimedia service) or a publisher. This is the architect of the project, combining the works of all participants. The idea and concept of the product comes from it, in some cases an editor can only supervise the realization of the product;
- The developer is a person who deals only with the physical component and the technical organization of the product. He does not take part in the process of structuring and planning the product, but together with the producer, he has an active role in the part of creativity related to the product;
- Users, i.e., those who do not play an active role in multimedia work but represent only the finality.

Traditional Literary Works

In the beginning, the copyright system protected literary works, understood in a generic sense both in written and oral form and which may be of a scientific, literary or other nature. For example, Belgian law refers to any kind of work (*écrits de tout genre, manifestations orales de la pensée*), Swiss law to *creations de l'esprit*, and in the United Kingdom it refers to any written, spoken or sung work (in the UK'S Copyright Designs and Patents Act 1988).

Regardless of the form they take, the common denominator of literary works is the fact that they operate with concepts within language. There are legal systems in which a work cannot be subject to copyright protection unless it is written, recorded or placed on a certain material medium. This is an effect of the Berne Convention, which has been influenced by delegates from common law countries, especially the United Kingdom (Bertrand 2005).

Literary works in the narrow sense of the word presuppose a text. The text is inextricably linked to language and its ability to be communicated and understood by others. In order for a text to be protected, it must be expressed in a current language or in a language that has existed in the past (e.g., Latin). In a more technical approach, we should point out that language is distinct from words. Language does not necessarily require a text composed of words. Words are a means of language, not language itself.

The question was whether an artificial language could be protected by the emergence of a large number of new technological products, computer programs being the first to be included in the spectrum of written works and thus the language is enriched, creating a niche of communication between experts rather than simple individuals.

Another example of the liberalization of copyright protection is its extension to databases. Databases are hybrid works as well as computer programs and fall within the scope of protection through the originality of selections and/or arrangement of materials. In this case, the author's personal contribution is very limited, sometimes non-existent, and this is due, on the one hand, to the fact that they are often made by many people and require a combination of efforts and substantial investments. Again, it is not originality and creativity that remain as an essential element in falling under the umbrella of copyright protection, but their usefulness and functionality (Roş 2001).

At European level, the seat of the subject in relation to the databases is represented by Directive 96/9/C.E. on the legal protection of databases. But the European legislation was not the first to grant copyright protection but, in addition to various national laws, this was achieved through art. 10.2 of the T.R.I.P. n.s. see the name. Later, the treaty [The] World Intellectual Property Organization (WIPO) comes to complete at the normative level the legal order regarding their protection. However, they do not provide a definite definition. The first complete definition of a normative act is found in Article 1.2 of the European Directive

according to which a database represents a collection of independent works, data or other materials arranged in a systematic way accessible by an electronic system or other means.

First of all, it should be noted that the computer program used in the construction of the database is not included in the scope of protection, which remains within the scope of the software directive. The component elements of a database can be very diverse, including: text of any kind, images, diagrams, figures, figures, sounds, etc. There is no limit to the number of components, but there is a limit to certain types of combinations: the materials that make up the contents of the database must be independent, individually accessible, and systematically arranged (The Marrakesh Agreement 1994).

The informational content of the databases, seen in the individuality of the components, although independent, is not protected separately by copyright, but only together with the database. The selection and arrangements must be the creation and intellectual property of the author in accordance with the provisions of European directives. The *sui generis* right is guaranteed to the person who creates the database, so that he can prevent third parties from extracting and/or reusing in whole or in part elements of his work without his permission. It is important that the creation of a database is done by involving a considerable qualitative and quantitative investment for obtaining, verifying and presenting the components.

Audiovisual Works

Not all national laws contain a definition of audiovisual works. For example, France provides in its legislation as works consisting in the development of images with or without sound. Although the term audiovisual implies the existence of a sound element, this element does not need to exist. Soundless images or documentaries that present only visual documents with or without the addition of any sound are also audiovisual works (Macovei 2010).

In the U.S., although the Copyright Act is a more precise piece of legislation, it tends to be more permissive and relaxed about the moving image element. Both in the U.S. as in France or Belgium, audiovisual works represent a generic term, to which several notions-species are related: cinematographic works, films, etc.

Only cinematographic works are mentioned in the Berne Convention. The criterion used here is not the dynamics of images or sound, but the use of cinematic processes. The presence of image or sound elements exists implicitly, as does the appearance of image dynamics or the dynamic potential of images. The definition and conditions are left to the discretion of the member states, possibly deriving from the traditional notion of cinematography.

The requirement of the Convention regarding the process to be either cinematic or similar suggests that some support is needed. If there is no material support, it is difficult to detect such a process, although it would contradict art. 2 (2) in which it is left to the discretion of the Member States to provide that works will be generally or exceptionally unprotected unless the works are fixed to a material support.

Conclusions

The value of a multimedia product does not necessarily lie in the originality of its components. If it were a question of some originality, it would possibly relate to the appearance of the product or to the ease with which it can be used, this due to the usefulness that such a product must have. Creativity consists rather in the way of combining and the variety of the various components.

Multimedia creation is computerized, it is not necessarily a computer program, but it can often be enhanced only by using a computer. Therefore, this new category of creation is no longer necessarily based on material support. It is a good in itself, and its value is given by the tendency to dematerialize information (OMPI 2001).

The first copyright convention was the “Berne Convention for the Protection of Literary and Artistic Works”. Encouraged by the elaboration of the Paris Convention on Industrial Property, at the Congress held in Bern on September 10-13, 1883, the International Literary and Artistic Association (ALAI) adopted a draft “convention for the establishment of the General Union for the Protection of the Rights of Authors over their Works literary and artistic”. The Swiss Federal Council sent this project to “all civilized countries” informing them of the holding of a diplomatic conference next year to discuss the project. In fact, three international conferences were needed before the final text was adopted. The Berne Convention of 12 September 1886, the result of the work of 17 “scientists” representing 12 countries, was considered, in its time, to be “the most perfect model of legislative texts”.

The Bern Convention of 1886 was first amended in Paris on May 4, 1896, followed by a first revision in Berlin in 1908, a new amendment on March 20, 1914, and a new revision - the Rome Act - of June 2, 1928, followed by another revision - the Brussels Act - of 26 June 1948. These various revisions were aimed at raising the level of protection of conventional rules. The last two revisions of the Berne Convention, the 1967 Stockholm Convention and the 1971 Paris Convention, on the other hand, have reduced the protection afforded by conventional rules by provisions derogating from copyright in favor of developing countries.

References

- Bertrand, Andre. 2005. *Droit des marques et des noms de domaine*. Paris: Dalloz, deuxième édition.
- Cremona, R. 2001. Le droit à l’image des biens, quoting Pierre Kayser.
- Macovei, Ioan. 2010. *Tratat de drept al proprietății intelectuale [Intellectual property law treaty]*. Bucharest: C.H. Beck, Publishing House.
- OMPI. 2001. *Introducere în proprietatea intelectuală [Introduction to intellectual property]*. Bucharest: Rosetti Publishing House.
- Picard, Edmond. 1928. *Le Droit Pur*. Paris: Ernest Flammarion éditeur.
- Puttemans, A. 2000. *Droits Intellectuelles et Concurrence Déloyale*. Bruxelles: Bruylant.
- Roș, Viorel. 2001. *Dreptul proprietății intelectuale [Intellectual property law]*. Bucharest: Global Lex Publishing House.
- Simler, Christel. 2010. *Droit d’auteur et droit commun des biens*. Thèse de doctorat. Litec.
- The Marrakesh Agreement, ratified by Romania by Law no 133 published in the Official Gazette no. 360 of December 27, 1994.