

Copyright

in 28 jurisdictions worldwide

Contributing editors: Andrew H Bart, Steven R Englund,
Susan J Kohlmann and Carletta F Higginson

2012



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Overview <i>Andrew H Bart, Steven R Englund, Susan J Kohlmann and Carletta F Higginson</i> Jenner & Block LLP	3
Argentina <i>Estela De Luca and Natalia Pennisi Moeller</i> IP Advisors	4
Australia <i>Kristin Stammer and Helen Macpherson</i> Freehills	11
Austria <i>Axel Anderl</i> Dorda Brugger Jordis Rechtsanwälte GmbH	17
Canada <i>Keri AF Johnston and Andrea Long</i> Johnston Wassenaar LLP	21
Chile <i>Claudio Magliona</i> García Magliona y Cia Limitada Abogados	27
Dominican Republic <i>Sylvio Hodos and Julissa Matias</i> Castillo & Castillo	34
Finland <i>Markku Tuominen</i> Benjon Oy	39
France <i>Catherine Mateu</i> Armengaud & Guerlain	44
Germany <i>Stephan Dittl and Karoline Brandt</i> Salger Rechtsanwälte	50
Greece <i>Alkisti-Irene Malamis</i> Malamis & Associates Ltd	56
India <i>Pravin Anand and Reuben Cheriyan</i> Anand and Anand	62
Israel <i>Tony Greenman</i> Tony Greenman Law Offices	68
Italy <i>Julia Holden and Elisabetta Ferraro</i> Trevisan & Cuonzo Avvocati	73
Japan <i>Chie Kasahara</i> Atsumi & Sakai	79
Malaysia <i>Benjamin J Thompson and Hannah Ariffin</i> Thompson Associates	84
Mexico <i>Luis C Schmidt</i> Olivares & Cía, SC	89
Netherlands <i>Martin Hemmer</i> AKD	95
Nigeria <i>Tolushuwa Oyebokun</i> Bloomfield Advocates & Solicitors	99
Poland <i>Dorota Rzążewska</i> Jan Wierzchoń & Partners – JWP	104
Romania <i>Ana-Maria Baciu, Delia Belciu and Iulia Ghita</i> Nestor Nestor Diculescu Kingston Petersen	110
Russia <i>Yuriy Korchuganov and Olga Zakondyrina</i> MGAP Attorneys at Law	115
Slovenia <i>Tjaša Drgan</i> Law Office Drnovšek LLC	120
Spain <i>José Antonio Suárez Lozano and Helena Suárez Jaqueti</i> Suárez de la Dehesa Abogados	125
Switzerland <i>Brendan Bolli, Sven Capol, Barbara Gehri and Felix Locher</i> E Blum & Co AG	131
Turkey <i>Ömer Yiğit Aykan</i> Çağa & Çağa	137
United Kingdom <i>David Cran and Jeremy Drew</i> RPC	146
United States <i>Andrew H Bart, Steven R Englund, Susan J Kohlmann and Carletta F Higginson</i> Jenner & Block LLP	153
Venezuela <i>Patricia Hoet-Limbourg</i> Hoet, Pelaez, Castillo & Duque	160

Greece

Alkisti-Irene Malamis

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Legislation and enforcement

1 What is the relevant legislation?

- Law No. 2121/1993 on copyright, related rights and cultural issues, as amended by Law No. 2173/1993 (article 4); Law No. 2218/1994 (article 59); Law No. 2435/1996 (articles 3 and 10); Law No. 2557/1997 (article 8); Law No. 2819/2000 (article 7); Law No. 3049/2002 (article 14); Law No. 3057/2002 (article 81); Law No. 3207/2003 (article 10, paragraph 33) and Law No. 3524/2007 (articles 1 and 2);
- Law No. 988/1943 regarding writers' rights on dramatic works;
- the Code of Civil Procedure, which sets the basic rules of procedure regarding cases subject to the jurisdiction of civil courts;
- Law No. 2479/1997 on the Supreme Special Court, expedition of proceedings, procedural simplifications and other provisions, which contains special provisions regarding the composition of courts before which copyright cases are brought (article 3, paragraph 26); and
- Council Regulation (EC) No. 1383/2003 of 22 July 2003, concerning customs actions against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights.

2 Who enforces it?

Copyright is primarily enforced in civil courts. Law No. 2479/1997 provides that the courts of first instance of Athens, Piraeus and Thessaloniki include a special chamber that tries copyright cases (article 3, paragraph 26). However, injunctions are not heard by specialised judges, but rather by judges who hear all types of disputes.

Criminal courts, the Greek police, the economic crime unit of the Ministry of Finance (SDOE) and customs authorities also enforce copyright law.

3 Are there any specific provisions of your copyright laws that address the digital exploitation of works? Are there separate statutory provisions that do so? If so, please describe them.

There are no separate legal provisions to address the digital exploitation of works. Instead, the general legal provisions also apply here.

4 Do your copyright laws have extraterritorial application to deal with foreign-owned or foreign-operated websites that infringe copyright?

Greek copyright laws do not offer extraterritorial application. One can apply Greek law if the copyright infringement can be construed to take place in Greece.

Agency

5 Is there a centralised copyright agency? What does this agency do?

The only centralised copyright agency provided under Greek law is the Hellenic Copyright Organisation (OPI), which is a legal entity established under private law and is subject to the supervision of the Ministry of Culture. Among OPI's competencies are:

- the protection of copyright holders;
- the implementation of Greek copyright legislation (Law 2121/1993) and international copyright conventions;
- the supervision of Greek collecting societies; and
- consultation and preparation of legislation relating to copyright.

OPI keeps a list of mediators for copyright disputes and intervenes in the following cases:

- In order to determine by its own decision the collection and payment method, as well as any other relevant detail, for the allocation of equitable remuneration among various collecting societies of each category, if interested parties fail to reach an agreement.
- If so requested, in order to collect statements made by importers or producers regarding the total value of the audio, video or audio and video media, reproduction materials, photocopiers, the photocopying paper, computers or other equipment that are subject to copyright levy according to article 18 of Law No. 2121/93, and in order to appoint chartered accountants to examine the accuracy of such statements.
- In order to recommend to the minister of culture provisional or permanent revocation of a collecting society's operation, according to law.

Subject matter and scope of copyright

6 What types of works are copyrightable?

In Greek law, a work protected by copyright is any original intellectual literary, artistic or scientific creation, expressed in any form. As such, Greek law refers by way of indication to:

- written or oral texts;
- musical compositions with or without lyrics;
- theatrical works accompanied or unaccompanied by music;
- choreographies and pantomimes;
- audio-visual works;
- works of fine art, including drawings, works of painting and sculpture, engravings and lithographs;
- works of architecture and photographs;
- works of applied art;
- illustrations; and
- maps and three-dimensional works relative to geography, topography, architecture or science.

‘Works’ are also defined as translations, adaptations, arrangements and other alterations of works or of expressions of folklore, as well as collections of works, or collections of expressions of folklore or of simple facts and data, such as encyclopedias and anthologies, provided that the selection or the arrangement of their contents is original.

In addition, special categories of works are protected by copyright:

- computer programs together with their preparatory design material, on the condition that they are original, in the sense that they are their author’s personal intellectual creation; and
- databases, which are subject to copyright protection if, by reason of the selection or arrangement of their contents, they constitute their author’s intellectual creation. Further, a sui generis right is awarded to the maker of a database, irrespective of its protection by copyright.

Official texts through which state authority is expressed – notably legislative, administrative or judicial texts and expressions of folklore, news, information or simple facts and data – are excluded from copyright protection.

7 What types of rights are covered by copyright?

Copyright covers economic and moral rights for right holders.

8 What may not be protected by copyright?

Copyright protection is not granted if the requirements provided by law are not met. Criteria for granting copyright protection are the work’s individuality and originality (a work is protected when it constitutes its author’s personal creation).

9 Do the doctrines of ‘fair use’ or ‘fair dealing’ exist?

Greek law provides an exhaustive list of limitations to copyright. Therefore, the doctrines on ‘fair use’ or ‘fair dealing’ are not applied. The limitations provided by law expressly provide for and permit (under certain conditions in each case):

- reproduction for private use;
- quotation of extracts;
- reproduction in school textbooks and anthologies;
- reproduction for teaching purposes;
- use by non-profit making libraries and archives;
- use by the National Cinematographic Archive;
- use for judicial or administrative purposes;
- use for information purposes;
- use and display by mass media of works located in public spaces;
- public performances during official ceremonies or within the activities of schools or universities;
- public display in museums;
- reproduction in catalogues for promoting sales of works of fine arts;
- reproduction for the benefit of blind and deaf-mute people; and
- temporary acts of reproduction that are transient or incidental and constitute an integral and essential part of a technological process, having as a sole purpose transmission in a network between third parties by an intermediary, or a lawful use of a work that has no independent economic significance.

All the above limitations apply only on the condition that they do not conflict with normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

10 What are the standards used in determining whether a particular use is fair?

Not applicable.

11 Are architectural works protected by copyright? How?

Greek law refers by way of indication to works of architecture as work protected by copyright. Authors of architectural works have both economic and moral rights. Jurisprudence recognises that architectural designs are protected by copyright when they have individual character and qualify as intellectual creations.

12 Are performance rights covered by copyright? How?

The protection of performers falls under ‘neighbouring rights’ provisions. They have the economic right to object to certain acts that are enumerated by Greek law and can prohibit (or license) the recording, reproduction and distribution of their performance, the presentation of their live performance to the public (radio broadcast excluded), and the making available to the public of their performance by wire or wireless means. They can also prohibit radio and TV broadcasting of their performance by any means, as well as its presentation to the public through an unauthorised recording. Greek law also recognises performers’ right to equitable remuneration when a genuine recording (sound or audio-visual) that includes their performance is broadcast or presented to the public. Performers have limited moral rights, including the right to acknowledgment of their performance, reference to their name and the right to prohibit any form of distortion of their performances.

13 Are other ‘neighbouring rights’ recognised? How?

In addition to performers’ neighbouring rights, Greek law recognises neighbouring rights for phonogram producers, producers of audio-visual works, radio and TV broadcasters and publishers of printed material.

Phonogram producers and producers of audio-visual works can prohibit some acts relating to unauthorised use of their recordings. Only phonogram producers have an equitable remuneration right. Radio and TV broadcasters have the right to prohibit (or license):

- rebroadcasting of their broadcasts;
- communication of their broadcasts to the public in places where an entrance fee is charged;
- recording of their broadcasts;
- the reproduction of fixation of their broadcasts;
- distribution of their recordings to the public;
- rental of their recording; and
- the making available to the public on demand of their recordings by wire or wireless means.

Greece is one of the few countries that recognises neighbouring rights for publishers of printed material. They have the right to prohibit (or license) any commercial reproduction of the composition and layout of a published work. They also have an equitable remuneration right.

14 Are moral rights recognised?

Moral rights are recognised for authors of works protected by copyright. Moral rights include authors’ power:

- to decide on the time, place and manner in which their work is made accessible to the public (publication);
- to demand acknowledgement of authorship and the right to have their name referred to in every public use of the work, or the right to present the work anonymously or under a pseudonym (attribution/paternity);

- to prohibit any distortion, mutilation or other modification of their work and any offence due to the conditions of the presentation of the work in public (integrity);
- to have access to the work, even when the economic right or the physical embodiment of the work belongs to another person; and
- in the case of literary or scientific works, to rescind any contract transferring the economic right or an exploitation contract or licence agreement, subject to payment of material damage to the other contracting party, because of changes in the authors' beliefs or circumstances.

Copyright formalities

15 Is there a requirement of copyright notice?

There is no requirement of copyright notice. A copyright owner usually puts his or her name on the work, but this is not required by law.

16 What are the consequences for failure to display a copyright notice?

If the copyright owner's name is displayed on a work, the person referred to in the notice is presumed by law to be the copyright owner (a rebuttable presumption).

If no copyright notice is displayed, then the person who claims to be the copyright owner has the burden of proving it.

17 Is there a requirement of copyright deposit?

There is no requirement of copyright deposit. However, it is useful to deposit copyright for evidence purposes in respect of the time of creation of the work. Such a deposit may be done in front of a notary public who certifies the date the document is submitted to him or her and verifies the signature of the person submitting such, or by means of certifying the signature on a document in front of a competent authority (at a police station or citizens' support centre (KEP)).

18 What are the consequences for failure to make a copyright deposit?

There are no adverse consequences for failure to make a copyright deposit, as long as the creation of the work and the identity of its author may be proved by other means.

19 Is there a system for copyright registration?

No; there is no system for copyright registration.

20 Is copyright registration mandatory?

Copyright registration is not mandatory.

21 How do you apply for a copyright registration?

Not applicable.

22 What are the fees to apply for a copyright registration?

Not applicable.

23 What are the consequences for failure to register a copyrighted work?

Not applicable.

Ownership and transfer

24 Who is the owner of a copyrighted work?

Under the basic rule, the owner and initial beneficiary of a copyrighted work is the natural person who is the creator of that work.

25 May an employer own a copyrighted work made by an employee?

Yes, but not automatically.

The basic rule is that the employee is the initial beneficiary of the economic and moral rights of a work created under an employment agreement. If there is no written agreement to the contrary, there is an automatic transfer of only the economic rights that are essential for the achievement of the purpose of the employment agreement. The moral rights stay with the creator.

26 May a hiring party own a copyrighted work made by an independent contractor?

Yes, but not automatically.

There is no explicit provision in Greek law in relation to independent contractors. The moral rights remain with the creator; transfer of economic rights is never automatic and depends on the agreement between the parties. Transfer of copyright may be proved against the creator only if such a transfer agreement is made in writing.

27 May a copyrighted work be co-owned?

Yes. In works of collaboration, the contributors own the copyright equally and mutually unless otherwise agreed.

In collective works (eg, audio-visual works), the natural person who coordinates the creation is the beneficiary and the other contributors are the owners of their contributions, if transferable.

In composite works (works that have value only when contributions are joined), the contributors are also co-owners of the work as a whole.

28 May rights be transferred?

Economic rights are freely transferable but moral rights cannot be transferred. The creator can only acquiesce in some acts that would otherwise infringe his or her moral right. After the creator's death, the moral right can be transferred to his or her heirs. A transfer agreement must always be in writing in order for it to be claimed against the creator. However, the creator may claim and prove transfer even if the agreement for such was not made in writing.

29 May rights be licensed?

Economic rights can be freely licensed, but moral rights cannot. A licence agreement must be in writing. Licence agreements for all the creator's future works are prohibited by law.

30 Are there compulsory licences? What are they?

There are no provisions for compulsory licensing. There are provisions that permit some use of copyrighted works, in the form of copyright exceptions.

31 Are licences administered by performing rights societies? How?

No, performing rights societies are by law responsible only for collection of the equitable remuneration.

32 Is there any provision for the termination of transfers of rights?

Yes. If the duration of a transfer agreement is not set in the transfer agreement itself or by common practice, it is considered to be five years.

33 Can documents evidencing transfers and other transactions be recorded with a government agency?

There is no such requirement. In practice, it is useful to have signatures certified by a notary public on the document, in order to avoid objections on the date of the agreement.

Duration of copyright

34 When does copyright protection begin?

As a general rule, copyright protection begins when the work is created and there are no other formalities for claiming or exercising it.

35 How long does copyright protection last?

Copyright protection lasts for the author's life plus 70 years after his or her death.

Protection of audio-visual works expires 70 years after the death of the last of the following contributors: the principal director, the author of the screenplay, the author of the dialogue and the composer of the music especially created for use in the audio-visual work in question.

Performers' rights expire 50 years after the date of the performance, but cannot last less than the duration of the performer's life. If a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years after the date of the first publication or first communication to the public, whichever is earliest.

Related rights of phonogram producers expire 50 years after the fixation is made. If the phonogram has been lawfully published within this period, the rights shall expire 50 years from the date of the first lawful publication. If no lawful publication has taken place within this period but the phonogram has been lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first lawful communication to the public.

Related rights of producers of audio-visual works shall expire 50 years after the fixation is made. However, if lawful publication or lawful communication of the device is made to the public within such period, the rights shall expire 50 years from the date of first publication or first communication to the public, whichever comes first.

Related rights of broadcasting organisations expire 50 years after the date of the first transmission of a broadcast, whether this broadcast is transmitted by wire or wireless, including cable, satellite or any other means of transmission.

Related rights of publishers expire 50 years after the last publication of the work.

The sui generis right provided in favour of database makers shall run from the date of completion of the database and expires 15 years after 1 January of the year following that date.

For works of collaboration, copyright lasts for 70 years after 1 January of the year following the death of the last surviving co-creator.

Copyright for orphan and pseudonym works lasts for 70 years after 1 January of the year following the year in which the work became available to the public, unless the creator revealed his or her identity before that period of time expired or the creator's pseudonym leaves no doubt about his or her identity. In this case, general rules are applied.

36 Does copyright duration depend on when a particular work was created or published?

Yes – it depends on the type of right holder and work. See question 35.

37 Do terms of copyright have to be renewed? How?

No.

38 Has your jurisdiction extended the term of copyright protection?

No.

Copyright infringement and remedies

39 What constitutes copyright infringement?

As a general rule, copyright is infringed by any act having the same object-matter and content as copyright and to the extent that copyright is protected by law and on the condition that the act is not made by the right holder or with his or her consent.

Besides actual copying, under certain conditions copyright is infringed in cases of unauthorised use of variants of works protected by copyright.

40 Does secondary liability exist for indirect copyright infringement? What actions incur such liability?

There is no explicit provision in Greek copyright law for secondary (civil or criminal) liability. However, under the scope of protection of the right holder's right to prohibit the making available of his or her work on demand by wired or wireless means, such liability may be justified. Moreover, such liability can be justified under general Greek civil and penal code provisions.

Currently, there is not a sufficient amount of case law through which to indicate which actions incur such liability.

41 What remedies are available against a copyright infringer?

In the case of infringement, authors or related right holders are entitled to demand that their rights are recognised by the court and that the infringer is ordered to cease and desist. It is also possible to ask for compensation for economic and moral losses incurred. Administrative penalties and penal sanctions are also provided.

42 Is there a time limit for seeking remedies?

The time limit for bringing an infringement action is the general rule on prescription: 20 years from the occurrence of the illicit act.

43 Are monetary damages available for copyright infringement?

Monetary damages are available to cover any economic and moral losses incurred. The courts may grant only the monetary remedies provided for by law, which are plaintiff's lost profits, account of profits by the defendant or moral damages.

In order to facilitate proof of damages, the law provides that pecuniary compensation may not be less than twice the fee that would be due under the law or common practice for the form of exploitation carried out by the infringing party without authorisation. Instead of seeking damages, and regardless of whether the infringement was committed with intent or negligence, authors or related right holders may demand the recovery of profits gained from such exploitation by the infringing party.

Punitive damages are available only if agreed in advance between contracting parties in the form of a penalty clause included

in the licence or other copyright exploitation or non-infringement agreement.

44 Can attorneys' fees and costs be claimed in an action for copyright infringement?

Attorneys' fees and costs may be claimed but cannot be recovered in full in an action for copyright infringement.

The defeated party is ordered by the court to pay the litigation costs, but the costs awarded are usually nominal. In addition, the court has the right to declare that each party is to bear its own costs when the outcome of the dispute is uncertain.

Only in cases where the object of the dispute is monetary (ie, compensation) may either party request that the court award damages according to a 'table' that is drafted in the legal arguments. Then the legal costs awarded may be calculated on the value of the dispute as 2 per cent plus 1 per cent for the plaintiff and as 2 per cent for the defendant in the case that the request for compensation is rejected.

45 Are there criminal copyright provisions? What are they?

Criminal proceedings against copyright infringers may lead to imprisonment of not less than one year and to a fine between €2,900 and €15,000. The term of imprisonment and the fine may rise to 10 years and €34,075 under certain circumstances and for severe infringements. In such cases, withdrawal of the infringer's trading licence is also provided as a penal sanction.

46 Are there any specific liabilities, remedies or defences for online copyright infringement?

There are no specific liabilities, remedies or defences for online copyright infringement. The rules applicable to all copyright infringement issues shall apply.

47 How may copyright infringement be prevented?

For infringement of present or upcoming copyright or related rights, or of the sui generis right of a database creator, it is possible to seek preliminary relief either on condition of urgency or in order to deter imminent risk of damage. The petition for an injunction may also include a request for a preliminary injunction. Among the preliminary measures available are the following:

- (a) precautionary seizure or detailed description (including photos) of objects that constitute the means, product or proof of the infringement, in order to preserve evidence;

- (b) recurring penalty payments in order to provisionally forbid infringements, or to prevent imminent infringements or the continuation of them;
- (c) lodging of guarantees intended to ensure the compensation of the right holder;
- (d) precautionary seizure or sequestration of the goods suspected of infringing copyright in order to prevent their entry into or circulation within commerce channels; and
- (e) precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of bank accounts and other assets and of bank, financial or commercial documents in the event of infringements committed on a commercial scale.

The preliminary measures provided under (b), (c), (d) and (e) above may, if necessary, be taken without the other party having been heard, particularly 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 that event, a notice shall be served on the adverse party on the first working day following execution; otherwise all acts of execution are invalid.

In addition, the copyright owner is entitled to ask for an order on precautionary seizure or a detailed description (including photos) of objects that constitute the means, product or proof of the infringement, in order to preserve evidence.

The court is compelled to order a preliminary injunction if so requested by the applicant in cases where there has been a precautionary seizure or a detailed description of infringing products has been given, in order to preserve evidence.

Relationship to foreign rights

48 Which international copyright conventions does your country belong to?

Greece has ratified the following international treaties:

- the Universal Copyright Convention signed in Geneva on 6 September 1952, ratified by Greek Legislative Decree No. 4254/1962 on the Ratification of the Universal Copyright Convention and the Adjunct Protocols No. 1, 2 and 3;
- the Berne Convention of 1886 for the Protection of Literary and Artistic Works, as revised in Paris in July 1971, and the Convention Establishing the World Intellectual Property Organization, signed in Stockholm on 14 July 1967, both ratified by Law No. 100/1975;
- the Convention Related to the Distribution of Programme-Carrying Signals Transmitted by Satellite, signed in Brussels on 21 May 1974, ratified by Greek Law No. 1944/1991;

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- the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, signed in Rome on 26 October 1961, ratified by Greek Law No. 2054/1992;
- the Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms, made in Geneva on 29 October 1971, ratified by Greek Law No. 2148/1993;
- TRIPS – Agreement on Trade-Related Aspects of Intellectual Property Rights, ratified by Greek Law No. 2290/ 1995;
- the WIPO Copyright Treaty, adopted in Geneva on 20 December 1996, ratified by Greek Law No. 3184/2003;
- the WIPO Performances and Phonograms Treaty, adopted in Geneva on 20 December 1996, ratified by Greek Law No. 3183/2003; and
- the European Convention on Human Rights (ECHR), which is also applicable insofar as recent jurisprudence has recognised that intellectual property is a form of property that is protectable according to article 1 of the 1st Additional Protocol of the ECHR.

49 What obligations are imposed by your country's membership of international copyright conventions?

After signing the above Treaties, Greece was obligated to enact domestic legislation in order to comply. It has to respect and enforce legal provisions and general principles included in the above Conventions. As a member of WIPO and WTO, Greece must also take part in forums on recent international copyright trends.

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