

PANEL II – PHONOGRAM PRODUCERS' RIGHTS

1- Which rights are awarded to phonogram producers?

Article 47 (1) of Greek Copyright Law (L. 2121/93)¹ awards to phonogram producers the following **exclusive rights**:

a) Reproduction, direct or indirect, temporary or permanent, by any means and in any form, in whole or in part; b) distribution to the public; c) the rental and public lending; d) the making available to the public, by wire or wireless means; e) the import of the said recordings;

Article 49 paragraph 1 of Greek Copyright Law (L. 2121/93) awards to phonogram producers **a remuneration right** for the following uses of their sound recordings:

a) radio or television broadcast by any means (e.g. wireless waves, satellite or cable); b) for the communication to the public

2- What is the nature of those rights? – Statutory? Contractual?

The above mentioned rights (exclusive rights, remuneration rights) are statutory.

3- Which of them are exclusive/remuneration rights?

The rights awarded by Article 47 L. 2121/93 are exclusive, while the rights awarded by Article 49 paragraph 1 L. 2121/93 are mere remuneration rights (see above under 1).

4- Which exceptions/limitations generate remuneration rights for phonogram producers?

The exception of reproduction for private use (Article 18 of Copyright Law 2121/93) generates remuneration rights for phonogram producers.

According to paragraph 3 of Article 18, sec. a), the remuneration due for computers, portable electronic devices (tablets) and smartphones (2% of their value) shall be distributed between authors, performers or performing artists, producers of recorded magnetic tapes or other sound or image or sound and image recording medium, and publishers of printed material.

According to paragraph 3 of Article 18, sec. b), the remuneration due for sound recording apparatus, magnetic tapes or any other media suitable for sound reproduction, for digital reproduction devices and media, and other storage media (6% of their value) shall be distributed to the respective rightholders as follows: 55% to authors, 25% to performers or performing artists, and 20% to producers of recorded magnetic tapes or any other sound or image or sound and image recording medium.

5- Are there any legal presumptions of transfer or is it voluntary/contractual?

¹ The text of Law 2121/93 is available in English in www.opi.gr.

As to the rights of phonogram producers the Copyright Law does not provide any legal presumptions of transfer. According to Article 52 (a) L. 2121/93, any agreements concerning those rights shall be valid legal agreements only when concluded in writing;

6- What type of compensation is paid in exchange? How is it set? For how long?

The compensation paid in exchange for the transfer of phonogram producers' rights can be set contractually. The type of compensation due, the method of its calculation and the duration can be set contractually.

7- How is producer's compensation determined for each business model?

Producer's compensation is determined contractually.

8- Are there minimum amounts due? Any other economic benefits?

NDA

9- Is digital piracy/streamripping still a major concern for phonogram producers?

Digital piracy is a major concern for phonogram producers as for other rightholders' categories. Therefore Copyright Law provides for an administrative procedure enabling any rightholder who submits a relevant request concerning digital piracy on the internet, to achieve (if the application is admissible), within a specific and brief timescale (no later than sixty (60) days), the prompt removal, or the access blocking to the work infringed.

10- Which rights are currently being collected via CMOs?

The following Exclusive rights as well as remuneration rights of phonogram producers are being collected via CMOs: (i.) the right of equitable remuneration provided by art. 18 (3) l. 2121/1993, (ii.) the right provided by art. 49 (1) l. 2121/1993 is administered by the joint society GEA (GRAMMO-ERATO-APOLLON), which attributes to Grammo the 50% of its income, after the deduction of administrative costs, (iii.) right of reproduction for the scope of communication to the public which is present in and/or absent from the place of communication (art. 47 (1a) l. 2121/1993) (iv.) right of making available to the public the sound carriers that have been legally synchronized to radio and/or television programs, from a place and at a time individually chosen by them (art. 47 (1d) l. 2121/1993), (v.) right of broadcasting audiovisual carriers (video clips) (art. 47 (2f) l. 2121/1993).

11- Which CMOs represent phonogram producers in your Country?

GRAMMO (www.grammo.gr) is the Collecting and Administrating Society of the producers of music and videoclips in Greece.

12- Do these CMOs comply with transparency principles?

Grammo makes its annual financial Data and Transparency Reports available on its website. (<https://www.grammo.gr/info/transparency-report/?lang=en>)

13- Is it possible to find out how much income is provided by each type of rights?

No reliable data are available as to the income provided by each type of rights.

14- What is the current litigation level for phonogram producers in your Country?

Section XI of Copyright Law (Articles 63A – 66E) offers a sufficient legal framework for an effective legal enforcement of phonogram producers' rights including injunction measures and precautionary evidence, injunction against intermediaries, civil sanctions, criminal sanctions and administrative sanctions, specific rules on the protection of technological measures and rights management information, as well as, sanctions for infringements of copyright and related rights on the internet.

15- Are there any relevant Court Decisions concerning phonogram producer's rights?

There are numerous Court decisions referring to the single and equitable remuneration (Article 49 (1) of Copyright Law) of phonogram producers due for the radio or television broadcast by any means (e.g. wireless waves, satellite or cable and for the communication to the public of their phonograms.

16- Are there any revocation of transfer of rights' agreements provisions?

There are no provisions on the revocation of transfer of rights' agreements .

17- What is considered a "phonogram published for commercial purposes"?

Unlike international Treaties (Art. 12 Rome Convention, Art. 15(1) WPPT) and European Directives (Art. 8(2) Directive 92/100), the Greek Copyright Law does not refer specifically to "phonogram published for commercial purposes". Furthermore Article 47 paragraph 3 provides that the term "producer of sound recordings" shall designate any natural or legal person who initiates and bears the responsibility for the realization of a first fixation of a series of sounds only.

18- Is there any type of phonograms that is published for non-commercial purposes?

The Greek Copyright Law does not distinguish between phonogram published for commercial purposes and phonogram published for non-commercial purposes.

19 - Which rights are involved in audiovisual synchronization ("production music")?

The following rights are involved in audiovisual synchronization: a) Reproduction right, b) distribution to the public; c) the making available to the public, by wire or wireless means; e) the import of the said recordings;

20- Which rights are involved in mood music/sound branding licensing?

The following rights are involved in mood music/sound branding licensing: a) Reproduction right, b) distribution to the public; c) the making available to the public, by wire or wireless means; e) the import of the said recordings;

PANEL III- BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS

1- Which rights are awarded to broadcasters in your Country?

Article 48 (1) of Greek Copyright Law (L. 2121/93) awards to radio and television organizations the following exclusive rights:

a) the transmission of their broadcasts by any means such as wireless waves, satellites or cable b) the communication of their broadcasts to the public in places accessible to the public against payment of an entrance fee c) the fixation of their broadcasts on sound or sound and visual recordings, regardless of whether the broadcasts are transmitted by wire or by air, including by cable or satellite broadcasting d) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of the fixation of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including cable or satellite e) the distribution to the public of the recordings containing the fixation of their broadcasts, including the copies thereof, by sale or other means. f) the rental or public lending concerning the recordings containing the fixation of their broadcasts. g) the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them concerning the fixation of their broadcasts.

2- What is the nature of those rights? – Statutory? Contractual?

The above mentioned rights (exclusive rights) are statutory.

3- Which of them are exclusive/remuneration rights?

The rights awarded to radio and television broadcasters by Article 48 L. 2121/93 are exclusive.

4- Which exceptions/limitations generate remuneration rights for broadcasters?

The exception of reproduction for private use (Article 18 of Copyright Law 2121/93) generates remuneration rights for broadcasters, as long as they are considered audiovisual producers for their internal productions. According to Article 47 (3) of Copyright Law, the term “producer of visual or sound and visual recordings” shall designate any natural or legal person who initiates and bears responsibility for the realization of a first fixation of a series of images with or without sound.

According to paragraph 3 of Article 18, sec. a), the remuneration due for computers, portable electronic devices (tablets) and smartphones (2% of their value) shall be distributed between authors, performers or performing artists, producers of recorded magnetic tapes or other sound or image or sound and image recording medium, and publishers of printed material.

According to paragraph 3 of Article 18, sec. b), the remuneration due for sound recording apparatus, magnetic tapes or any other media suitable for sound reproduction, for digital reproduction devices and media, and other storage media (6% of their value) shall be distributed to the respective rightholders as follows: 55% to authors, 25% to performers or

performing artists, and 20% to producers of recorded magnetic tapes or any other sound or image or sound and image recording medium.

5- Are there any legal presumptions of transfer or is it voluntary/contractual?

As to the rights of broadcasters the Copyright Law does not provide any legal presumptions of transfer. According to Article 52 (a) L. 2121/93, any agreements concerning those rights shall be valid legal agreements only when concluded in writing;

6- What is the relevance of copyright infringement in relation to broadcasters' rights?

Copyright infringement is a main issue especially for Pay – Tv services, suffering a big harm and loss of profits from devices offering the possibility to circumvent technological measures as well as internet sites streaming illegal content (e.g. sports events).

7- Is digital piracy/streamripping still a major concern for broadcasters?

Digital piracy is a major concern for broadcasters as for other rightholders' categories. Therefore Copyright Law provides for an administrative procedure enabling any rightholder who submits a relevant request concerning digital piracy on the internet, to achieve (if the application is admissible), within a specific and brief timescale (no later than sixty (60) days), the prompt removal, or the access blocking to the work infringed. Specific orders on a case-by-case basis are provided, while special procedures (live blocking injunctions) are provided for sport and cultural events.

8- Do UGC platforms contribute to broadcasters' rights? How?

To our knowledge UGC platforms in Greece do not contribute to broadcasters' rights.

9- What is the current litigation level for broadcasters' rights in your Country?

Section XI of Copyright Law (Articles 63A – 66E) offers a sufficient legal framework for an effective legal enforcement of broadcasters' rights including injunction measures and precautionary evidence, injunction against intermediaries, civil sanctions, criminal sanctions and administrative sanctions, specific rules on the protection of technological measures and rights management information, as well as, sanctions for infringements of copyright and related rights on the internet.

10- Are there any relevant Court Decisions concerning broadcasters' rights in your Country?

Court Decisions concerning broadcasters' rights refer to pay tv services and especially the use of equipment or systems which permit the circumvention of effective technological measure (e.g. decoders).

11- Are broadcasters acting as One-Stop Shop in relation to retransmission operators?

To our knowledge no broadcaster is acting as One-Stop Shop in relation to retransmission operators.

12- Which rights are awarded to audiovisual producers in your Country?

Article 47 (2) of Greek Copyright Law (L. 2121/93) awards to producers of audiovisual works (producers of visual or sound and visual recordings) the following **exclusive rights**:

a) Reproduction, direct or indirect, temporary or permanent, by any means and in any form, in whole or in part; b) distribution to the public; c) the rental and public lending; d) the making available to the public, by wire or wireless means; e) the import of the said recordings; f) the broadcasting of the said recordings by any means including by satellite or cable, as well as the communication to the public.

According to Article 47 (3) of Copyright Law, the term “producer of visual or sound and visual recordings” shall designate any natural or legal person who initiates and bears responsibility for the realization of a first fixation of a series of images with or without sound.

13- What is the nature of those rights? – Statutory? Contractual?

The above mentioned rights (exclusive rights) are statutory.

14- Which of them are exclusive rights? Which of them are remuneration rights?

The rights awarded by Article 47 (2) of L. 2121/93 are exclusive.

15- Which exceptions/limitations generate remuneration rights for audiovisual producers?

The exception of reproduction for private use (Article 18 of Copyright Law 2121/93) generates remuneration rights for audiovisual producers.

According to paragraph 3 of Article 18, sec. a), the remuneration due for computers, portable electronic devices (tablets) and smartphones (2% of their value) shall be distributed between authors, performers or performing artists, producers of recorded magnetic tapes or other sound or image or sound and image recording medium, and publishers of printed material.

According to paragraph 3 of Article 18, sec. b), the remuneration due for sound recording apparatus, magnetic tapes or any other media suitable for sound reproduction, for digital reproduction devices and media, and other storage media (6% of their value) shall be distributed to the respective rightholders as follows: 55% to authors, 25% to performers or performing artists, and 20% to producers of recorded magnetic tapes or any other sound or image or sound and image recording medium.

16- Which rights are transferred to audiovisual producers? For how long?

According to Article 34 of Copyright Law (l. 2121/93) if not contractually specified, the contract shall be deemed to transfer to the producer all the economic rights which are necessary for the exploitation of the audiovisual work, pursuant to the purpose of the contract.

17- Are there any legal presumptions of transfer towards audiovisual producers?

According to Article 34 of Copyright Law (l. 2121/93) a contract dealing with the creation of an audiovisual work between a producer and an author (as well as the creators of individual contributions incorporated in the work) shall specify the economic rights to be transferred to the producer. If the aforementioned provision is not met, the contract shall be deemed to transfer to the producer all the economic rights which are necessary for the exploitation of the audiovisual work, pursuant to the purpose of the contract.

As for the creators of individual contributions incorporated in the work, if not contractually specified, the contract between the producer and the authors of individual contributions, other than the composers of music and writers of lyrics, shall be deemed to transfer to the producer those powers under the economic right which are necessary for the exploitation of the audiovisual work, pursuant to the purpose of the contract.

18- What type of compensation is paid in exchange? How is it set? For how long?

The compensation due (sum, type of compensation) paid is the result of contractual arrangement.

According to the general rule (Article 32 of Copyright Law) the fee payable to the author by the other contracting party shall be obligatorily determined as a percentage, agreed freely between the parties. By way of exception, the fee may be agreed as a lump sum, when it is practically impossible to calculate a percentage fee or when the nature or the conditions of the exploitation make the implementation of a percentage impossible, notably when the author's contribution is not an essential element in the intellectual creation as a whole, or when the use of the work is secondary in relation to the object of the exploitation.

According to Article 34 (3) of Copyright Law, the author of an audiovisual work shall retain the right to a separate fee for each form of exploitation of the work. The aforementioned fee shall be agreed as a percentage, specified in the relevant contract. The calculation of the percentage shall be based on gross revenues, without exception, or the gross expenditure or on the combined gross revenues and expenditure, realized in the course of the exploitation of the work. The producer of the audiovisual work is obliged once a year to give the author of the work all information concerning the exploitation of the work, in writing, showing him also all relevant documents. Short advertising films shall be exempt from the provisions of this paragraph.

For the rental of audiovisual recordings, the author shall in all cases retain the right to an equitable remuneration.

19 - How is audiovisual producer's compensation determined for each business model?

NDA

20- Are there minimum amounts due? Any other economic benefits?

NDA

21- Do UGC platforms contribute to such compensation schemes? How?

To our knowledge UGC platforms in Greece do not contribute to such compensation schemes.

22- Is digital piracy/streamripping still a major concern for audiovisual producers?

Digital piracy is a major concern for audiovisual producers as for other rightholders' categories. Therefore Copyright Law provides for an administrative procedure (Article 66E of Copyright Law) enabling any rightholder who submits a relevant request concerning digital piracy on the internet, to achieve (if the application is admissible), within a specific and brief timescale (no later than sixty (60) days), the prompt removal, or the access blocking to the work infringed. Specific orders on a case-by-case basis are provided.

23- What is the most recent estimation of rights' loss on account of digital piracy in your Country?

No reliable data are available as to the rights' loss on account of digital piracy in Greece.

24- What is the current rule in terms of audiovisual exploitation windows in your Country?²

Length of exclusivity of theatrical window ===> Between 30 and 90 days

Media in the following window ===> DVD

VoD window =====> Starts between 30 and 90 days after the theatrical release

Average length of exclusivity ==> 90 days

Previous window => DVD Following window ==> Pay TV

25- Which CMOs represent audiovisual producers in your Country?

There are more than one CMOs representing the rights of audiovisual producers in Greece.

DIAS - Producers of audiovisual works, website: www.dias-osd.gr

HERMIAS - Producers of motion pictures, website: www.ermias.gr

IRIDANOS - Producers of audiovisual works, website: www.iridanos.gr

TILEOPTIKA DIKAIOMATA S.A. - Related rights of broadcasting organizations and producers of audiovisual works, website: www.tvrights.gr

There are also two Collective Protection Organizations, whose purpose is solely to protect the rights of their members against infringements:

² [See, Ranaivoson/ De Vinck / Van Rompuy, ANALYSIS OF THE LEGAL RULES FOR EXPLOITATION WINDOWS AND COMMERCIAL PRACTICES IN EU MEMBER STATES AND OF THE IMPORTANCE OF EXPLOITATION WINDOWS FOR NEW BUSINESS PRACTICES, FINAL REPORT, A study prepared for the European Commission DG Communications Networks, Content & Technology, 2014]

EPOE - Company for the Protection of Audiovisual Works, website: www.epoe.org

OPDDE - Advertising Companies Rights Protection Society, website: www.opdde.gr

26- Do these CMOs comply with transparency principles?

CMOs representing audiovisual producers make their annual financial Data and Transparency Reports available on their websites.

27- Is it possible to find out how much income is provided by each type of rights?

No reliable data are available as to the income provided by each type of rights.

28- What is the current litigation level for audiovisual producers' rights in your Country?

Section XI of Copyright Law (Articles 63A – 66E) offers a sufficient legal framework for an effective legal enforcement of audiovisual producers' rights including injunction measures and precautionary evidence, injunction against intermediaries, civil sanctions, criminal sanctions and administrative sanctions, specific rules on the protection of technological measures and rights management information, as well as, sanctions for infringements of copyright and related rights on the internet.

29- Are there any relevant Court Decisions concerning audiovisual producer's rights?

There are several court decisions (penal procedures) against acts of piracy, as well as injunctions against intermediaries offering access to illegal sites offering films for downloading and streaming.

30- Are audiovisual producers acting as One-Stop Shop in relation to retransmission operators?

To our knowledge, no audiovisual producer is acting as One-Stop Shop in relation to retransmission operators.

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