

Audiovisual works as intellectual property

by

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1. Introduction

We identify the result of the creative work of an artistic and independent team, including a scriptwriter, a director, an operator and an artist for cartoons as **audiovisual work**. The products of their activity in the form of scientific, science - fiction, documentary or other form are an intellectual result. As an intellectual result **the audiovisual work is an object of intellectual property**, in particular as an object of artistic property /copyright as a legal term/.

The term “**intellectual property**” refers broadly to the creations of the human mind. Intellectual property rights protect the interests of creators by giving them property rights over their creations.

The *Convention Establishing the World Intellectual Property Organization (1967)* does not seek to define intellectual property, but gives the following list of the matter protected by intellectual property rights:

- literary, artistic and scientific works;
- performances of performing artists, phonograms, and broadcasts;
- inventions in all fields of human endeavour;
- scientific discoveries;
- industrial designs;
- trademarks, service marks, and commercial names and designations;
- protection against unfair competition; and
- “all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.”

Intellectual property relates to items of information or knowledge, which can be incorporated in tangible objects at the same time in an unlimited number of copies at different locations anywhere in the world. The intellectual property includes two main groups of property: artistic property /copyright as a legal term/ and industrial property /complex of patent, design, indications and competitive law as a wide legal terms/

The importance of protecting intellectual property was first recognized in the

- *Paris Convention for the Protection of Industrial Property* in 1883 and the *Berne Convention for the Protection of Literary and Artistic Works* in 1886.

The World Intellectual Property Organization (WIPO) administers both treaties.

The object of protection is the audiovisual work: work, including in itself images, movements and/ or voices. Working definition is: series of interconnected images, fixed on any type of medium, with or without sound, perceived as a moving picture and used in any manner.

The subject – holder of protection is the collective body of writer, director, operator and artist /in the case of cartoons/. The other legal name for the subject-holder is an author. In this case it is a collective body of many natural persons–the creators.

Audiovisual work is an object of protection automatically, no any requirements for registration or deposit of the original work or its copies, regarding the copyright law. There are **no requirements for novelty of the art idea to protect any work.**

The only requirement is that the artistic work has to be presented in a **new original way**, in a new original form.

Originality is explained as a term by J. Phillips и A. Firth / Philips, J., A. Firth, “Introduction to intellectual property law”, Butter Worths, London, 1990, p.223-226/ as: there is a casual relation between author’s creative conception and the work as a result of his creative work. These are: skillfully, insight, work.

Every work is under protection, independently of its form and art qualities. No need to be presented to the public. The fact of its materialization is enough to arise all of the rights.

Copyright in the field of the audiovisual works /AVW/ is under regulation in many normative acts on national, regional and international level. The most important are: Bern convention for the protection of literature and art works, Rome convention for the rights of performing artist and producer, TRIP’s agreement, WIPO Copyright treaty and WIPO performances and Phonograms treaty. For the purpose of this record we will focus on the following: Bern Convention and Bulgarian Copyright Law.

2. Main principles of the Bern Convention, 1886

Bern Convention is the major act in the field of literature, science and artistic works. Its main aim is to protect more effectively moral and economic rights of the creators /their heirs/.

Principles of the Bern Convention:

1. **The principle of nationality:** Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention.
2. **The principle of automatically:** The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.

3. **The principle of independence:** domestic law governs Protection in the country of origin. However, when the author is not a national of the country of origin of the work for which he is protected under this Convention, he shall enjoy in that country the same rights as national authors.

The country of origin shall be considered to be:

(a) in the case of works first published in a country of the Union, that country; in the case of works published simultaneously in several countries of the Union, which grant different terms of protection, the country whose legislation grants the shortest term of protection;

(b) in the case of works published simultaneously in a country outside the Union and in a country of the Union, the latter country;

(c) in the case of unpublished works or of works first published in a country outside the Union, without simultaneous publication in a country of the Union, the country of the Union of which the author is a national, provided that, when these are works of architecture erected in a country of the Union or other artistic works incorporated in a building or other structure located in a country of the Union, the country of origin shall be that country.

3. Protection of the audiovisual work according to the Bulgarian copyright law, 1993

First of all, I would like to emphasize that the Bulgarian copyright law is fully synchronized with the international and European law in the field of copyright.

The main standing in the Bulgarian copyright law is:

Object of protection is: any literary, artistic and scientific work resulting from a creative endeavour and expressed by any mode and in any objective form shall be the object of copyright.

In particular the objects of copyright protection as audiovisual works are:

- The result of scientific researches in the form of audiovisual works;
- multimedia presentation;
- other results of the academic work in the way of audiovisual work;
- documentaries;
- films in the categories: science fiction; drama works; comedy works; historical; criminal, fantasy; musical; thriller, horror movie; soap operas, military, mysteries, situation comedy and other kinds;
- cartoons and animation.
- collection of instructions, exercises, methods, lessons, etc., fixed on a CD holder.

Professionals in audiovisual works are discussing such terms as: films and other audiovisual materials; “digital work” and “web-design”, “interface design”, “software work”, etc. The main characteristic of those works is the mixture of sound, movement and/ or images.

Subject-holder of the author’s rights on the audiovisual work could be:

- **author of the work**, “An author is a natural person whose creative endeavour has resulted in the creation of a literary, artistic or scientific work. Other natural or legal persons may be copyright proprietors only in the cases provided for under this Act”
- Until proved otherwise, the person whose name or other identifying mark is inscribed in the customary manner on the literary, artistic or scientific work, shall be considered its author.

Copyright over works created by two or more persons shall belong to them jointly irrespective of whether the said works constitute one indivisible entity or consist of separate parts each having individual significance. **In this case we are identifying this work as a Joint Authorship.**

Copyright over audiovisual works belongs to the many persons that form the collective body **of the author**:

- **the director,**
 - **the author of the screenplay,**
 - **the director of photography**
- and
- **the artist director in cartoons.**

The **author of the music, the dialogue, the pre-existing literary work** on which the AVW are based, **the costume designers and the authors of all other material**, incorporated in the AVW, shall enjoy **the copyright** in their individual works.

4. Exclusive rights on the audiovisual works

Copyright on the audiovisual works comes into force at the moment of its creation. Regarding the Bulgarian copyright law the exclusive rights on the audiovisual works origin for its creator or for collective body of the creators.

4.1. Non-Economic rights /Moral rights/

The author shall be entitled to:

- **decide** whether the work created by him **may be made available to the public** and to **determine the time, place and manner** in which this may be done;
- **claim the copyright** over such works;
- **decide** whether such works shall be made available to the public **anonymously or pseudonymously**;
- **require** that his **name, pseudonym or other identifying mark** be identified in a suitable manner whenever his work is used;

- **require that the entirety of his work is preserved** and oppose any changes therein as well as any other actions that may violate his legitimate interests or personal dignity;
- **make alterations** in the work inasmuch as this does not prejudice rights acquired by other persons;
- **have access to the original of the work** when it is in the possession of another person and whenever such access is necessary for exercising non-economic or economic rights;
- **halt the use of the work due to changes in his beliefs**, with the exception of already implemented architectural works, providing compensation for the damages incurred by persons who have lawfully obtained the right to use the work.

4.2. Economic rights

The author shall be entitled to the exclusive right to use the AVW created by him and to permit its use by other persons except in the cases when this Act provides otherwise. Actions such as the ones listed below shall be considered as ways of use within the meaning of paragraph 1:

- **reproduction** of the work;
- **distribution** of the original of the work or copies thereof among an unlimited number of persons;
- **public presentation** of the work;
- **public display** of a work of art or a work created by photographic or similar means;
- **revision of the work**. Revision shall be the use of the work to create a new derivative work;
- **import and export** of the work in trade quantities

The author possesses the right to receive a reward for every kind of using of his work and for every consecutive using of such kind.

5. Free use of the audiovisual works

Out of author's exclusive rights on his creative work is the so called "**free use**".

We should define **the legal person "user"**. Regarding the CR law **the user can be: physical or legal persons, such as "publishers, theaters, concert organizers, radio and TV organizations, public catering and entertainment establishments, producers of phonograms, film producers, Internet content providers** and other, who bring the work to the attention of readers, spectators and listeners directly or through the intermediary of the other persons - distributors".

Bulgarian copyright law defines different forms of free use: **permissible use and personal use; free use with compensation or free use with no compensation.**

5.1. Permissible Free Use

No permission from the author and no compensation shall be due in the case of:

- the use of parts of published works or of a moderate number of small works in other works in such a volume as is necessary for the purposes of an analysis, commentary or another kind of scientific research. Such use shall be permissible only for scientific and educational purposes, shall include reference to the source and name of the author, and only when it does not prejudice the normal use of the work and does not result in unjustified damage to the legitimate interests of the authors;
- reproduction by photographic, cinematographic or similar manner, as well as audio or video recordings of works related to a current event for the use of such works by the media in a limited volume for the purpose of providing news coverage;
- reproduction of works that are on permanent display on streets, squares and other public places without their being subjected to mechanical contact copying, as well as their broadcasting by wireless means, by cable or other technical means, if this is done for the purpose of providing information or for other non-commercial purposes;
- the public performance of published works in educational institutions if this does not involve the collection of revenues from such performance and if the participants in the preparatory work and the actual public performance do not receive compensation;
- reproduction by copier or other similar means of parts of published works or of small works by educational institutions and their use for educational purposes;
- reproduction in small quantities of already published works, with the exception of computer software and data bases, by using copier, photographic or other means by public libraries, document centers, research institutions, etc., if this is done for scientific purposes or to preserve the works and if the copies are not circulated outside the framework of the organization which has made them;

5.2. Free copying for personal use

- The copying of already published works shall be made without the consent of the author and without compensation only if it is done for personal use. This shall not be valid for computer software and architectural designs.
- The compensation payments shall be made to a designated by the ministry responsible for culture organization, which shall then distribute them among the organizations representing the individual categories of copyright proprietors. Prior to any such distribution, twenty per cent of all sums collected shall be turned over to the ministry responsible for culture to be used for the purposes of culture.
- The distribution of the sums thus collected among the various categories of copyright proprietors shall be made on the grounds of an agreement between the organizations carrying out the collective management of the individual kinds of copyrights.

Nowdays in the digital age and Internet we should pay a special attention to the question of CD Libraries, CD collections, AVW in a digital format, torrents, etc., related to the AVW.

I consider that **AVW's being on a digital holder** or its transmission in digital space is just **another way of an AVW's existence**. To be fixed AVW in a digital way is necessary to have the author's consent for use of this AVW.

When a public library, museum, archive institution do this fixation on the digital form for the purpose of conservation of cultural heritage the author's consent is not necessary.

However, when a user, including an Internet supplier, creates a new digital format of the already existing AVW or made available the existing AVW for use by everyone, he must have received prior authorization from the author. He must have a prior permission by the author as a collective body.

The principle is: the author and the supplier are the two sides of the contractual relationship with the object: AVW and it's use. This way of the economic realization of the AVW must bring revenue for the both sides: the author and the supplier. This income should be distributed between them. The particular way of the distribution of the forthcoming income from the AVW' use has to be fixed in the contract beforehand.

6. Duration of copyright protection on the audiovisual works

Copyright protection is temporary. The principle is: Copyright shall be protected for the life of the author and seventy years after his death.

For works having two or more authors the term specified in paragraph 1 shall commence from the death of the last surviving author.

Copyright over anonymous or pseudonymous works shall be protected for fifty years after the works have been first made available to the public. In the event that within the said term the author's identity is disclosed, the provisions of the preceding article shall apply.

The terms mentioned in the preceding articles of this chapter shall commence as of January 1 of the year following the year of the author's death, or, respectively, the year when the work was made, or made available to the public or published.

7. Legal defense against illegal use of the audiovisual works

The audiovisual work could be used only under the permission of its author. Every use of the audiovisual work without permission is an infringement in the law. These activities are called intellectual piracy or copyright infringement /CI/. CI has grown dramatically since the late 1970s, as technology has facilitated the unauthorized duplication of copyrighted works. Copyright infringement surged in the entertainment industry after the advent of home video equipment. Initially, unauthorized recordings were made using hand-held video cameras to surreptitiously record movies shown at movie theaters.

In the 1990s, unauthorized duplication of AVW on CDs began to become an international phenomenon. It is estimated that over 100 million CDs /with music and

movies/ have been illegally reproduced for selling/. The main reason for this is called internet and the so called free use /personal mainly/

Not everybody sees copyright infringement as a problem. Some see it as a natural evolution of society in conjunction with the rise of the internet, which fundamentally changes the way society operates.

Bulgarian copyright law includes the following ways for a defense: civil defense, administrative defense and penal defense.

1. Civil defense: in the case of infringement in the copyright the author possesses the legal opportunity to claim before a court the following types:

1. the claim for a compensation for the damages;
but there is no sufficient information about the amount of the compensation, the author may demand the following:
 - the revenues received as a result of the violation
 - the value of the object of violation at retail prices
 - an amount ranging from seventy levs to thirty five thousand levs.
2. the claim for restraining the illegitimate use;
3. the claim for seizing and destroying illegitimately produced copies of the work, including negatives, master copies, printing forms and others used for the purposes of copying;
4. the claim for seizing and putting out of operation the copying, decoding and reproducing equipment used exclusively for committing violations.

2. Penal-administrative defense:

Any person who has realised one or mixture of the following actions:

- reproduces and distributes video media with recordings of films or other audio-visual works
- reproduces and distributes audio media with recordings of works
- organizes in any manner whatsoever public showings of films or other audio-visual works;
- offers sound or video recording services to third parties consisting of the preparation of single copies of audiovisual works;
- organizes live or recorded public performance or presentation of a work;
- broadcasts by wireless, cable or other means audio-visual works;
- publishes or distributes already published works

or other action from the granted exclusive author's rights shall be liable to a fine from two hundred thousand to two million levs, unless the violation is punishable by a more severe penalty and the object of the violation, regardless of whose property it may be, shall be seized in favor of the State and shall be delivered to be destroyed by the bodies of the Ministry of the Interior.

There are some specifics when the case is second, subsequent or system violation.

3. **Penal defense:** Penal defense is under regulation of Penal code, that differ three types of crime in the copyright's protection:

- **contrafaction** – crime, that includes fixing, reproduction, distribution, broadcasting or other action from economic author's rights without the autor's legal permission; unauthorised use of one's own original; work;
- **plagiarism** – the wrongful appropriation, close imitation or publication, of another author's language, thoughts, ideas, or expressions, and the representation of them as one's own original work. Copyright infringement is a violation of the rights of a copyright holder, when material protected by copyright is used without consent. On the other hand, the moral concept of plagiarism is concerned with the unearned increment to the plagiarizing author's reputation that is achieved through false claims of authorship.
- **intrusive authorship** – under the force of the official state , e.g. the one of the boss, the dean or the manager as a part of the collective author's body. The mentioned person does not give a creative contribution to the released work.

Every kind of crime leads to the fines and/ or imprisonment according the legal text of the Penal Code.

8. Consequences of the copyright protection on the audiovisual works

Putting the audiovisual works under copyright law leads to the following:

- every copying of the audiovisual works is treated as a law infringement and intellectual piracy;
- author of the audiovisual works possesses the right to receive a compensation for own work in using;
- company realizes the economic benefit from the product including the audiovisual works in trade;
- company obtains goodwill in business field.

Advantages of this kind of protection are:

- no formalities

and

- long period of protection.

Copyright protection of the audiovisual works has **disadvantages:**

- only exactly copying of the audiovisual works is treated as a law infringement;
- the art concept could be modified easily and presented in other new form, which can be protected as an object of copyright law.

In the field of audiovisual works we may discuss related rights of the performing artists, producers, legal users e.g. broadcasting organizations, internet suppliers and many others persons or organizations. Deeper presentation on this matter goes beyond this record's objectives.