

Intellectual Property in the Publishing Industry

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1. Introduction

Publishing is the process of production and dissemination of the works of literature — the activity of making information available to the general public. Most often the author /creator of the publication/ gives to another person the right to make a publication of the book. In some cases, authors may be their own publishers.

Traditionally, the term ‘**publishing**’ refers to the distribution of printed works such as books, magazines, periodicals and newspapers. Within the book publishing industry, the **publisher of** a book is the entity in whose name the book's ISBN is registered. **The publisher of printed works** is the actual publisher in the meaning of this record.

Publishing includes the stages of the development, acquisition, copy editing, graphic design, printing and distribution of newspapers, magazines, books - literary works as a whole. Publishers play a key role in making literary works known and available to the reading public. They are responsible for preparing, managing, selling and distributing such works. They are also the creators and managers – holders of numerous intellectual property rights, possessing certain rights in the books, newspapers, magazines and other printed literary works.

The result of publishing is called publication. Publications as a legal concept of copyrights are the focus of this record. Especially, Publications as IP rights.

In general we differ many types of publications, such as:

1. printed books;
2. periodicals, magazines, newspapers and other collective literary works;
3. others: academic publications, publications in Braille, audiobooks and e-books.

For the purpose of this record we will pay attention to **the printed books** and **collective literary works**. For copyright purposes, where there is a difference in the protection of:

- A. published and unpublished works;
- B. printed books; periodicals, magazines and newspapers; academic publications and publications in a specific way - mentioned above.

Copyright is perhaps the most significant intellectual property right in relation to the publishing industry. Publishers, at the outset, need to acquire from authors the exclusive rights of reproduction and distribution, which are recognized by the WIPO-administered Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) and the WIPO Copyright Treaty (WCT).

In providing a work to the general public, the publisher takes the responsibility for the publication in a way that the mere printer or the shopkeeper does not. For example, publishers may face charges of defamation, if they produce and distribute libelous material to the public, even if the libel was written by another person.

The result of the work of creators or team of creators, including writer, designer of book cover, illustrations, photographs we identify as **publications**. As an intellectual result the publication is an object of intellectual property, particularly as an object of artistic property- copyright as a legal term.

Object of protection is the literary work: work, including in itself text, photos, illustration, graphic layout.

Subject – holder of protection is the author, designer of book illustrations, publishing company in a case of collective works: periodicals, magazines, and newspapers.

Publications /books, periodicals and collective works/ are object of protection automatically, no any requirements for registration or deposit of the original work or its copies, regarding to the copyright law. There are no requirements for novelty of the art idea to protect any work. The only one requirement is that the art work has to be presented in a new original way, in a new original form. Every work is under protection, independently from its form and art qualities. Copyright is under regulation in many normative acts on international and national level: Berne Convention for the Protection of Literary and Artistic Works (the Berne Convention) and the WIPO Copyright Treaty (WCT). For the purpose of this record we are going to focus on the following: Bern Convention and Bulgarian Copyright Law.

2. Main principles of the Bern Convention, 1886

Bern Convention¹ is the major act in the field of the literature, science and artistic works, administrated by World intellectual property organization /WIPO/. Its main aim is to protect more effectively moral and economic rights of the creators /their heirs/.

Principles of the Bern Convention:

- **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.
- **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.
- **The principle of independence:** Protection in the country of origin is governed by domestic law. 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.

Those main principles of Bern Convention are basically of the national regulation of copyright in Bulgaria.

WCT is a special agreement under the Berne Convention for protection of literary and artistic works from 1996. The detailed review of this agreement beyond the purpose of present report.

¹ www.wipo.int

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

First of all, I would like to notice that the Bulgarian copyright law² is fully synchronized with the international and European law in the field of copyright.

3.1 Object of protection

The main point in the Bulgarian copyright law:

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

Objects of copyright protection as publications are:

- Books as a unity of text, graphic layout and illustrations;
- Periodicals, magazines, newspapers and other collective literary works
- Academic publications, publications in Braille, audiobooks and e-books.

3.2 Subject – holder of copyright

Subject-holder of the author rights on the publications could be:

- **Author of the work**, “An author is a natural person whose creative endeavors have 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 CR law
- 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 Joint Authorship.**

² Law on copyright and related rights, SG 56, 1993

In case of periodicals, magazines and newspapers subject-holder could be:

1. **author** for the separated materials such as text, photos, interviews and so on,
2. **editor** as a creator of the general conception of these special literary works and the publishing company has a right to be noticed on the printing body with the sign C.
3. **translator in case of permitted translation of the original printed book.**

Those conclusions are based on CR law:

1. The copyright to periodicals and encyclopedias belongs to the person or entity responsible for the creation and publication of the work. Copyright in such a work included in the parts that have the nature of a work of literature, art and science, belongs to their authors. /art.10/
2. The copyright for the collections, anthologies, bibliographies, databases and the like belong to the person who carried out the selection or arrangement included works and / or materials , unless the contract provides otherwise. Copyright in such a work included in the parts that have the nature of works of literature, art and science, belongs to their authors. The inclusion of works or parts thereof in such a work would require the agreement of their authors, unless otherwise provided by law /art.11/
3. Copyright in the translation or processing belongs to the person who made them, without prejudice to the rights of the author of the original work. This does not deprive others of their right to make their own independent translation or adaptation of the same work. /art.9/

3.3. Exclusive rights on the publications

Copyright on publications come into force at the moment of its creation. Regarding Bulgarian copyright origins exclusive rights for its creator.

3.3.1. Non-Economic 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.

3.3.2. Economic Rights

The author shall be entitled to the exclusive right to use the work created by him and to permit its use by other persons except in the cases when this Act provides otherwise. In case of publications we have a specific legal term of ‘publication of work’. Which meaning is: bringing the work to the attention of the public, through reproduction and distribution of copies of it in a sufficient quantity depending on the nature of the work.

Actions such as the ones listed below shall be considered as uses 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;
- **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

Author possesses the right to receive a reward for every kind of using of its work and for every consecutive using of such kind. Author could make a contract with a publishing company to realize reproduction and distribution of publications.

The rights of public presentation and revision of the work are completely author's rights. The rights of import and export of the publication could be under contract in the field of business of the publishing company. That depends on the contract between author and publishing company.

3.4. Duration of copyright protection on the publications

Copyright protection is temporally. The principle is: Copyright shall be protected for the life of the author and fifty 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.

Specific cases:

- **Anonymous and pseudonymous works**

The copyright for the work used anonymously or under a pseudonym , for seventy years after the disclosure of his first . If within this period the author is known or if the alias is no doubt about his person /Art.28/

- **Compilations**

Copyrights for encyclopedias, periodicals and other collective works is for seventy years after their disclosure. For works which are published in volumes, parts, issues or episodes term is calculated for each of them separately.

- **Unpublished works**

Any person disclosing work after expiration of the term of copyright if it was not published until then, enjoy the economic rights, mentioned before. These right continued for 25 years from January 1 of the year following the year in which the work was made public.

- **Works of unknown authors**

For works for which the term of protection is not calculated from the death of the author or authors and have not been made public within 70 years after their creation, legal protection under this Act shall be terminated.

3. 5. Free and legal use of the publications

Out of authors exclusive rights on its creative work are so called “**free use**”. Bulgarian copyright law defines different forms of free use: **permissible use and personal use; free use with compensation or free use no compensation.**

3.5.1. 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.

3.5.2. 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.
- 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.

3.5.3: Legal use of publications under copyright

Legal use of publication is only under agreement between subject-holder of copyright and publishing company. This agreement is called **contract for use** of the work - the author grants to the user the exclusive or non-exclusive right to use the work created by him under certain conditions and remuneration.

Publishing company is a type 'users of works' according to the Bulgarian copyright law, which gives a legal definition: 'are natural and legal persons, as **publishers**, theaters, concert organizers, radio and television organizations, ,content providers on the Internet and others **who bring the work to the attention of readers, viewers and listeners directly or by other parties – distributors**'.

There are two types of contract of use: **publishing contract for printed books and contract for periodical publishing.**

A. Basic point of the publishing contract are:

1. By publishing contract the author grants the publisher the right to reproduce and distribute the work, and the publisher is obliged to carry out these actions and pay compensation to the author.
2. By publishing contract can be granted the right to reproduce and distribute already established work or work which the author undertakes to create.
3. The publishing contract shall be concluded in writing.

B. Basic points of the contract for periodical publishing

1. Right to use a commissioned work: The author of a commissioned work is not allowed without permission from the publisher to offer the same product or parts of it for publication in periodicals or as a separate edition , as well as wireless broadcasting before its publication by the publisher.
2. Unless otherwise agreed , the limitations in the preceding paragraph shall not apply when the expiration of fifteen days - newspapers , and three months - for magazines , from the date of submission of the manuscript and the publisher has

not published it or not notified in those periods the author that he will publish a statement of the number , which will be published .

3. The author has the right to use their already published in a periodical from the date of publication unless the letter has been agreed.

4. Publishers of periodicals are required to return the original works of art, original documents and illustrations offered to them for publication unless the letter has been agreed.

3.6. Defense against illegal use of the publications

The work could be used only in the permission of its author. Every using of the art works without of permission is an infringement in law. These activities are called intellectual piracy. Bulgarian copyright law includes the following ways for a defense: civil defense, administrative defense and penal defense.

4. Actual issue in publications

The publishing industry is in a stage of transformation that will render all traditional procedures and ways of use by consumers. Those include electronic resources, the electronic versions of books and periodicals.

In the digital nowadays anyone can be a published writer or can become a publisher. Thus, there is a digital marketplace that will obliterate traditional territorial boundaries.³

How to cope with this digital issue?

The answer is complex and comprehensive. It includes a variety of measures: technical, organisational and legal. The answer is anywhere there. The answer is in the process of searching and aprobaton. This issue is the field of everyday task and everyday work for experts at WIPO, WTO and WLO.

³ wipo.int/smes publications