

## NEWS FROM GREECE

**DIONYSIA KALLINIKOU**

Emeritus Professor of Law, University of Athens

**PIERRINA KORiatopoulou**

Doctor of Laws, Lawyer admitted to the Bar

It is eight years since the last “News from Greece” presented an overview of Greek case law and the development of Greek copyright law; written by Professor Elsa Deliyanni, it was published in the April 2009 issue (no. 220) of RIDA.

As we take over this task, our thoughts turn to our distinguished predecessor, Professor Georges Koumantos, former President of ALAI, who, with his exceptional vitality and ardent spirit, defended a European and humanist conception of authors’ rights to the end of his days.

We shall begin our survey of Greek law with an analysis of the current legislation, as amended by the law implementing Directive 2014/26 on

collective management (Part 1, D. Kallinikou), then, continuing with a look at recent case law developments, we shall present the most interesting decisions of the courts (Part 2, P. Koriatopoulou).

## **PART 1: HARMONISATION OF THE GREEK LEGISLATION WITH DIRECTIVE 2014/26 ON COLLECTIVE MANAGEMENT**

### **1. The Main Provisions of Law 4481/2017**

The Greek legislation was harmonised with Directive 2014/26 by Law 4481/2017 and specifically by articles 1 to 54 of the first part of the law in question. As indicated in the explanatory memorandum, the law is intended not only to implement Directive 2014/26 but also to establish a comprehensive and autonomous collective management framework to supplement the main law on authors' rights and related rights (Law 2121/1993).

The provisions of Law 4481/2017 concerning collective management cover in particular the following matters: aim and scope, definitions, operating licence, establishment of a single collective management organisation, sphere of competence of collective management organisations, legal presumptions, operation and structure, general assembly of members and supervisory board, assignment of management, admission of a new member, licences for non-commercial use, rights of non-member rightholders, obligation to provide information, rights revenue, management costs, distribution of royalties, management of rights under representation

agreements, user licences and setting of tariffs, tariff scales, user obligations, communication and publication of information, annual transparency report, multi-territorial licensing of rights in musical works, complaints procedure, notice of infringement, alternative dispute resolution procedure, imposition of sanctions, exchange of information, protection of personal data, independent management entities in a dominant position, and the commissioner in charge of reorganisation.

Law 4481/2017 also includes provisions dealing with infringements of rights on the internet, reproduction for private use and the extension of the fair compensation to computers, tablets and smartphones, and the right of public lending of works by libraries.

Articles 54 to 58 of Law 2121/1993, which were repealed, contained provisions on the legal form of collective management organisations and their supervision by the Ministry of Culture, the contract for the grant of rights, the assignment of management, the organisations' relations with authors and users, dispute resolution and the sanctions which may be imposed on collective management organisations.

As a result, instead of having a separate law, it was possible at the legal level to transpose Directive 2014/26 by means of amendments to the corresponding section of the main national law (Law 2121/1993) which has provided authors with effective protection for a number of years in line with the traditional principles of authors' rights.

## 2. Independent Management Entities

“Independent management entities” are an innovation in Directive 2014/26 and Law 4481/2017. According to the legislative framework and the conditions set out in the legislative texts in question, the sole or main purpose of an “independent management entity” is to manage authors’ rights or related rights on behalf of several rightholders for the collective benefit of those rightholders, but it is neither owned nor controlled, directly or indirectly, in whole or in part, by those rightholders and it is organised on a for-profit basis (article 3c of Law 4481/2017).

Accordingly, the operation of profit-making entities in the field of collective management is provided for at both the European Union level and the national level. However, Law 4481/2017 goes further than the directive by providing for independent management entities in a dominant position on the Greek market, on which it confers a large number of privileges enjoyed by collective management organisations but without laying down the criteria based on which an independent management entity is deemed to hold a dominant position (article 50 of Law 4481/2017).

Independent management entities are subject to fewer monitoring obligations than collective management organisations. This offers them favourable operating conditions given that a simple notification is sufficient to enable them to operate in Greece without their needing an operating licence like collective management organisations (article 4, para. 8 of Law 4481/2017). There is also a provision requiring communication of the list of rightholders

and the type of management carried out by the management entity in question. It follows that the operation of an independent management entity is easier than the operation of collective management organisations. This gap is filled in part by article 32 of Law 4481/2017 which contains provisions concerning the nominalisation of shares if the independent entity operates in Greece in the form of a limited company as well as provisions on the communication of certain information and on the special conditions for an independent management entity to join a collective management organisation.

Under article 32 of Law 4481/2017, independent management entities are prohibited from carrying out mandatory collective management and do not qualify for the application of the management and protection presumptions. However, Law 4481/2017 lays down an exemption from this provision for independent management entities in a dominant position already operating on the effective date of the law. The latter are eligible both to benefit from the management and protection presumptions and to undertake the mandatory collective management established in certain cases, for example, reproduction for private use (article 50 of Law 4481/2017). The provisions in question are not provided for in the directive and raise the question of discriminatory treatment between collective management organisations and independent management entities.<sup>1</sup>

Law 4481/2017 introduces less favourable conditions of competition for non-profit-making collective management organisations not only in relation

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1. See P. Koriatopoulou and Ch. Tsigou, Law 4481/2017 on collective management and the changes it brings about in intellectual property law, *Synigoros law journal*, V. 122, 2017, p. 28.

to independent management entities (whether in a dominant position or otherwise) but also in relation to collective management organisations operating in other Member States, concerning substantive matters such as the operating licence, the appointment of a commissioner, the introduction of a cap on expenses and the imposition of heavy fines.

In the case of independent management entities in a dominant position, Law 4481/2017 provides for the establishment and operation of a general assembly of members and a supervisory board (article 9, para. 9 and article 10, paras. 8-11 of Law 4481/2017) in order to ensure the widest possible participation of members, transparency and accountability. The first supervisory board is appointed by the Minister of Culture and Sports.

### **3. The Commissioner in Charge of Reorganisation**

Law 4481/2017 institutes a commissioner in charge of reorganisation who is appointed by judicial decision either in the event that collective management organisations or independent management entities in a dominant position have failed to discharge outstanding financial obligations or in the event of their current or imminent non-performance of financial obligations, or if they are confronted with a serious financial problem or a management problem liable to jeopardise rightholders' royalties (article 51 of Law 4481/2017).

As a preventive and administrative measure, Law 4481/2017 also provides for a temporary commissioner to be appointed by the Minister of Culture and

Sports on the advice of the Intellectual Property Organisation (IPO) if there is a serious allegation that the collective management organisation is not able to fulfil its obligations, particularly to collect and distribute to rightholders the revenue accruing to them (article 54, para. 15 of Law 4481/2017).

Two opinions have been expressed in specialist literature concerning the commissioner. One opinion<sup>2</sup> criticises the appointment of a commissioner, stressing that the provision in question is contrary to freedom to provide services and freedom of establishment, and to the non-application of the provisions of bankruptcy law, and entails the risk of State intervention in the ownership and self-administration of a legal entity. The other opinion<sup>3</sup> considers, by contrast, that the commissioner represents a measure to protect the collective interest of rightholders and the public interest.

It is appropriate that there should be strict State supervision and monitoring concerning in particular the management of income and the transparency of the organisations' financial data. The legislative framework of Law 2121/1993 also provided for supervision of collective management organisations. However, asphyxiating control, in combination with the provision of a cap on management costs (article 18, para. 3 of Law 4481/2017), without the position regarding rights searches and claims being taken into consideration and with the added threat of the appointment of a commissioner, does not facilitate the smooth operation of collective management. On the

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2. M.-Th. Marinos, Some critical remarks on the legislative bill on collective management organisations: [www.syneemp.gr](http://www.syneemp.gr)

3. L. Kotsiris, Opinion on the legislative bill on collective management organisations: [www.syneemp.gr/assets/Kotsiris DiMEE 2016 pp. 335-340](http://www.syneemp.gr/assets/Kotsiris_DiMEE_2016_pp.335-340).

contrary, it disorganises it and leads to an interventionist system which, under the provisions of Law 4481/2017, could result in the nationalisation of collective management organisations. Yet it does not follow from Directive 2014/26 that collective management organisations should be placed under State control.

It is clear that the scope of the provisions of Law 4481/2017 is far broader than that of the required harmonisation and the goals of Directive 2014/26. As a result, the collective management organisations already operating in Greece will find themselves in a less favourable position in relation to the organisations operating in other Member States with regard to those matters on which the directive leaves the States regulatory discretion.

#### **4. Establishment of Single Collective Management Organisations**

A characteristic of the collective management organisations operating at the national level is the similar object of the managed repertoire, except in certain specific cases.<sup>4</sup> In general, the members of each organisation are from professional associations with a similar object. This holds in Greece for almost all the collective management organisations operating in the form of non-profit-making cooperatives.

The possibility of establishing single collective management organisations (article 5 of Law 4481/2017), irrespective of the category of rights, repertoire

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4. See, for example, the case of the collection of the single equitable remuneration for broadcasting and communication to the public of sound recordings.



or members, is going to lead to the operation of collective management organisations representing rightholders with competing interests, such as, for example, the likelihood of the participation of both authors and broadcasting organisations within the same collective management organisation. By preserving the economic freedom and rights of authors and performers in an economically weaker position, Law 2121/1993 was able to avoid such a situation. A mix of members with different types of repertoires within a single organisation could generate serious conflicts of interest with negative effects on the operation of collective management organisations.

### **5. Time Limitation on Claims**

The provision (article 19, para. 8 of Law 4481/2017) laying down, by way of derogation from the Civil Code, that actions to claim revenue from rights are time-barred after ten years does not transpose a provision of the directive and yet its application will mean that authors are then permanently deprived of the remuneration due to them.

### **6. Sanctions**

The sanctions (articles 46-47 of Law 4481/2017) for any breach of the law, such as the imposition of administrative fines ranging from €2,000 to €200,000, together with the temporary or permanent withdrawal of approval, lead to a “register of punishments” at the expense of authors and holders of related rights. The procedure for imposing sanctions and the bureaucratic formalities introduced by Law 4481/2017 are cumbersome, while the

excessively regulatory nature of the provisions of a punitive kind could lead to the reduction or even the disappearance of some collective management organisations with a purely national repertoire.

## **7. Conclusion**

Law 4481/2017 includes provisions which depart from the framework of Directive 2014/26 and stray from the anthropocentric spirit of the protection of authors and performers underpinning Law 2121/1993, regardless of the cultural importance of authors' rights and collective management. Intellectual creation and production are viewed from a purely economic perspective while excessive statism and bureaucracy are introduced in the whole rights management process. Only with the implementation of Law 4481/2017 will it be possible to determine whether, in the end, the necessary smooth operation and balance are ensured in the field of collective management.

## **PART 2: CASE LAW DEVELOPMENTS**

The aim of this part is to highlight, among the many decisions rendered by the Greek courts in the field of copyright, those which we consider to be of particular interest. Readers of these different cases will find that we have tried to strike a balance between classic subjects and issues related to new technology and particularly the internet.

### 1. Database (Judgment of the Court of Cassation no. 1051/2015)<sup>5</sup>

The case concerned the extraction of the contents of a database without the maker's authorisation. Specifically, a mathematician specialising in the design, interpretation and analysis of maps and at the same time interested in hunting, came up with the idea – and took the initiative and investment risk – of creating a database with special hunting maps for all the regions of Greece, which constantly checked, corrected and updated the data, to serve as a guide for hunters. A few months later, a forestry association developed a database for the hunting zones in its region, using to do so a quantitatively substantial part of the mathematician's database without his agreement.

The Court of Cassation ruled that the lower court had correctly found that the plaintiff database maker warranted the specific protection afforded to database makers by the *sui generis* right under article 45A of Law 2121/1993 which introduced the regime of Directive 96/9/EC in Greek law. In particular, the Court of Cassation considered that the lower court had correctly applied the legal rule by granting the status of database maker to the plaintiff who, in order to generate the maps in question, had made long trips and hikes throughout the country and had visited zones where hunting was permitted, wildlife sanctuaries where hunting was prohibited and national parks; then, after comparing the recorded experiences with other sources of information (decrees, ministerial decisions, etc.), the plaintiff had mentioned all this data on the maps with the aid of geometric tools and software and constantly updated them, a laborious task requiring many hours of creative

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5. Law journal Epitheorisi Emporikou Dikaiou 2016, p. 454.

work, together with a combination of intellectual skills, specific knowledge and major financial investments.

In addition, the lower court had rightly held, in the Court of Cassation's view, that the hunting maps fulfilled the requirement of originality and enjoyed copyright protection because they did not merely present a representation of nature like ordinary maps, given that, in addition to that presentation, the collection and selection of the information making up the maps, the arrangement, structure and method of assembling the material, and the accompanying texts, which formed a literary work in their own right, constituted a new whole forming an original work of the mind bearing the stamp of its author's personality.

## **2. Violation of Performers' Moral Rights (Judgment of the Athens Court of Appeal no. 761/2016)<sup>6</sup>**

A Greek drinks manufacturer used an old advert, created to promote an alcohol-free beer in Greece, to launch the same product on the Albanian market. To enable the advert to be broadcast to the Albanian public, the actors' dialogues were dubbed, without their prior agreement. Under the contract concluded between the parties, the advert's producer had assigned the economic rights in the advert to the drinks manufacturer only for the territory of Greece. Initially, the producer of the audiovisual work had brought a lawsuit against the manufacturer and succeeded in obtaining an order prohibiting further broadcasting of the advert in Albania and payment of

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6. Law journal *Dikaio Etairion kai Epiheiriseon* 2017, p. 48, commentary by K. Kyprouli.

damages. Subsequently, the actors who had performed in the advert took legal action against the manufacturer, claiming that the dubbed film distorted their performances and thus undermined the integrity of their artistic performance.

Before confirming the district court's decision at first instance, the Court of Appeal recalled that performers are the only holders of related rights to enjoy moral rights; these rights are limited, in relation to authors' moral rights, to two prerogatives: the right to be identified as the performer of the performance (paternity right) and the right to respect for the performance (integrity right). The Court then held that the replacement of the actors' voices, without their authorisation, with those of other persons, constituted a distortion of their performances, in violation of the moral right of integrity, and awarded them damages for the harm caused to their moral rights.

### **3. Moral Right of Access to the Work (Judgment of the Athens Court of Appeal no. 1819/2016)<sup>7</sup>**

Article 4 § 1d of Law 2121/1993 establishes a right of access as one of the author's moral rights by stating that, even if the economic rights or the work's physical medium belong to a third party, the author of the work may require that he or she be given access to its physical medium, provided that the holder of the rights or the owner of the medium is caused as little inconvenience as possible. Therefore, this provision allows authors to gain physical access to the originals of their works, those most concerned in this regard being works of visual art.

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7. Law journal *Nomiko Vima* 2017, p. 79.

The case in question involved a conflict between the heirs of a prominent Greek architect who had received distinctions in the field of urban architecture and was a great lover of photography. The architect, who had died without leaving a will, had left as his heirs his two children who had inherited an archive full of architectural drawings, sketches, and photographs and his personal diary chronicling his fascinating life, his private thoughts and his memories. The deceased architect's daughter brought proceedings against her brother who systematically denied that she was the co-owner of their father's copyrights, did not allow her to have access to their father's archive after his death and granted third parties licences to use their father's works without her authorisation.

In a long, well-reasoned decision, the Court of Appeal held that the defendant, by preventing the co-owner from accessing the works' original physical media, acted in violation of the co-owner's moral right, particularly the right of access, and thus caused her harm. The Court granted the applicant 50% co-ownership of the rights in her father's original works, prohibited the defendant from managing the deceased architect's intellectual property rights without her prior written consent and ordered the defendant to give her access to their father's original works once a week, on 24 hours prior notice, for a period of 20 minutes at a time. This decision is of particular importance with regard to the moral rights because it is the first one to recognise and impose a right of access to the work's physical medium.

#### **4. What do Authors' Rights Protect? (Judgment of the Athens Court of Appeal no. 3510/2015)<sup>8</sup>**

In this case, a Greek ship-owner had told the story of his adventurous life to a journalist so that the latter could write his biography. The ship-owner had subsequently delivered the manuscript of the interview to another person, a writer, who had gone on to publish it in his name. An action against the writer and the ship-owner was brought by the journalist/drafter who claimed to be the co-author of the biography because the published text was based on his manuscript.

The Court held that if the protagonists' words were original (the selection and wording of the questions, the interview process, the answers given), then the interviewee and the interviewer would be recognised as being co-authors of the oral work. Once the words had been taken down in writing, if they were reworked by the journalist in an original form that made them eligible for protection, the journalist would be the sole author of the derivative work, i.e. the text in the manuscript. However, the Court stressed that the writer who had written the biography had drawn only the raw information, the secrets and the little details of the ship-owner's life from the journalist's manuscript and had formulated them in a particular creation, which was original because it bore the stamp of his personality. The Court pointed out that the journalist could not monopolise the facts and information concerning the ship-owner's life by means of copyright because it protects only the original

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8. Law journal *Dikaio Etairion kai Epiheiriseon* 2016, p. 43, commentary by K. Kyprouli.

formal expression of the facts in a work and allows ideas, facts and concepts to circulate freely.

### **5. Abuse of a Right (Judgment of the Athens Court of Appeal no. 3241/2014)<sup>9</sup>**

Under article 14 of Law 2121/1993, acts dealing with the transfer of economic rights, the assignment of the exploitation right, the grant of an exploitation licence and the exercise of moral rights are null and void if they are not concluded in writing. This is a public policy rule to protect authors, considered to be the weaker party to contracts.

An audiovisual production company taking part in a European programme to promote the Member States' cultural heritage, launched by the National Audiovisual Institute, commissioned a director, by verbal agreement, to create a work in the form of an animated cartoon film which the production company subsequently assigned to the Institute to be shown free of charge in secondary schools. Two years after the work had been shown, the director, based on the mandatory provision of article 14, took action against the Institute and the production company, arguing that, as there was no written contract between the parties, the exploitation of his work infringed his rights in the work.

The Court of Appeal ruled that the legal action was abusive because the director's conduct (his particularly friendly relationship with the opponents,

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9. Law journal *Dikaio Etairion kai Epiheiriseon* 2014 p. 798, commentary by K. Kyprouli.



the good cooperation between them, the delivery of the final copy, the approval of the cover of the DVD, the fact of tolerating the work's exploitation for two years and of refraining from taking legal action) proved that he had consented from the outset to his work's free exploitation and, in addition, had given the exploiting parties the legitimate conviction that he would not object to the circulation of his work.

This decision was severely criticised by legal scholars and is still pending before the Court of Cassation. The balance between the right to bring proceedings and the prevention of abusive proceedings seems to remain tricky to establish. However, a very strict approach to Law 2121/1993 does not support the soundness of this decision because the reason why the legislator opted for the requirement of an instrument in writing for grants of rights is to protect creators from rashly relinquishing their rights. The circumstances mentioned in the reported case are commonplace in artistic circles where authors are more interested in completing their works than in protecting their rights and so fail to pay particular attention to the terms and conditions of the work's exploitation. Furthermore, the period of two years that elapsed from the work's completion before the action for infringement was brought is not particularly long to create the conviction on the part of the exploiting parties put forward to justify weakening the right.

**6. Injunctions against Intermediaries whose Services are used to Infringe Authors' Rights (Decisions of the Athens District Court nos. 4658/2012, 13478/2014 and 10452/2015)<sup>10</sup>**

The Athens District Court granted the application for an injunction filed by collective management societies to prohibit Greece's biggest internet access providers from giving their customers access to certain websites allowing internet users to stream or download films without the rightholders' authorisation.

In the first decision (no. 4658/2012) the Athens District Court held that the access providers were indeed intermediaries within the meaning of Directive 2001/29/EC and ordered them to block the infringing websites by any effective means and notably by blocking certain domain names. It is interesting to note that, before ordering the measures, the judge considered the process and cost of disabling subscribers' access to specific internet addresses (IP addresses) as well as the effectiveness of the measure and its impact on the ISPs' overall offer, to ensure that the chosen enforcement measure satisfied the principle of proportionality. For that reason, the judge also stressed that the chosen measure's implementation would not compromise the performance of the other internet access services, like the access speed, the response time and the available bandwidth.

Two years later, the same Court (Athens District Court, decision no. 13478/2014) dismissed a similar application by stressing that such an

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10. Law journal *Xronika Idiotikou Dikaiou* 2012, p. 373, commentary by D. Kallinikou.

undertaking would lead to the passive monitoring of internet traffic. According to the judge, the blocking measures would infringe on the internet access provider's freedom to conduct business; in addition, the proposed measures would infringe on fundamental rights and particularly freedom of information because there was a risk that the filtering would not sufficiently differentiate between illegal and legal content, with the result that its deployment could lead to communications of legal content being blocked.

So it is apparent that, for the moment, the scales tip in favour of fundamental rights in the view of the Greek courts because they prefer not to involve ISPs, which are often the best placed to prevent infringement occurring via their services, even though the process endorsed in Greek law by European law (article 8(3) of Directive 2001/29/EC and article 9(1)(a) of Directive 2004/48/EC) is easier, less costly and, ultimately, more proportionate and effective.

### **7. Panorama Exception – Three-Step Test (Decision of the Athens District Court no. 3141/2015)<sup>11</sup>**

The case concerned the occasional use of a work of architecture without the author's authorisation. Under article 26 of Law 2121/1993, it is permissible for images with works of architecture, works of visual art, photographs and works of applied art located permanently in public places to be reproduced and communicated occasionally, through the media, without the author's authorisation and without payment.

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11. Law journal Xronika Idiotikou Dikaiou 2016, p. 59, commentary by S. Stavridou.

The front of a building had been used by the defendant (an advertising company) as the backdrop of an advert without the prior authorisation of the architect who brought proceedings against it in which he claimed damages for unlawful communication and broadcasting of his work.

In response to the defendant's contention that occasional use of a work of architecture is permitted by the panorama exception, the author argued that the specific use of the front of his building for commercial purposes did not fulfil the criteria of the three-step test because his building's reproduction and communication to the public conflicted with a normal exploitation of his work and unreasonably prejudiced his legitimate interests.

The Court affirmed that the three-step test constituted an additional condition for the exception's application to be accepted and that this condition was subject to its sovereign assessment: once the conditions for the application of an exception are met, the court must also examine whether the possible free use of the work does not harm the author's interests.

Under article 26 of Law 2121/1993, use by the media of architectural works permanently located in public places does not require the author's authorisation when it is merely incidental to the subject handled. Unlike the French or Belgian legislation, the Greek law does not restrict the exception's application to natural persons and/or non-profit-making purposes.

In the advert at issue, which lasted 65 seconds, the building was reproduced and shown in the background for two seconds, when the camera's

objective flashed onto the cars parked in the courtyard. As a result, the judge held that the fleeting and secondary use of the protected work fulfilled the panorama exception's criteria. Then, with regard to the three-step test, the judge stressed that the work's disputed use was limited in quantitative and qualitative terms because it amounted to occasional reproduction and communication which did not compete with a normal exploitation of the work and did not lead to a disproportionate loss of revenue for the plaintiff because he could still exploit the image of his building as the main subject through commercial publication.

Before concluding, we should mention the significant academic work published over the last few years on various intellectual property issues, including in particular the monographs which, in most cases, are doctoral theses. To restrict ourselves to the latter, the following subjects, among others, can be cited: technological protection measures and the digital management of intellectual property; the author's economic rights in the digital environment; exploitation contracts in intellectual property law; the protection of architectural works from a copyright perspective; and moral rights and personality rights in the digital environment.

The subject has also been enriched by recent case law and the legislature has not remained inactive. It has likewise contributed – in terms that are not very felicitous – to the further development of the collective management regime.

We conclude with a wish: that the successful application of the main law on authors' rights and related rights (Law 2121/1993) for the last 25

years, together with the appropriate adoption of the *acquis communautaire*, continues to produce rich case law for the benefit of creators.

(English translation by  
Margaret PLATT-HOMMEL)