

**REVIEW OF LEGISLATION ON COPYRIGHT AND RELATED RIGHTS**

**ROMANIA<sup>2</sup>**

The present document reproduces the introductory statement made by the delegation of Romania, the questions put to it and the responses given in the review of legislation at the Council's meetings of 12 May 1997 and 16 July 1998.<sup>3</sup>

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**I. INTRODUCTORY STATEMENT**

Romania is a beneficiary of the transitional arrangements under Article 65 of the TRIPS Agreement.

Nevertheless, the Romanian authorities have taken steps to adopt new regulations in the area of copyright and related rights which take into account the provisions of the TRIPS Agreement and those of other relevant international conventions, regulations which have been given concrete form in Law No. 8/1996.

In these circumstances, we are submitting the legislation for review without prejudice to Romania's rights under Article 65. We regard this review as a transparency exercise designed to keep WTO Members informed of the progress made by Romania in regulating copyright and related rights.

Furthermore, this process could provide Romania with very important support by enabling it to identify those elements of the domestic legislation which might require modification to bring them into conformity with the provisions of the TRIPS Agreement.

The Law on Copyright and Neighbouring Rights of 14 March 1996 was published in the Monitorul Oficial No. 60 of 1996 and entered into force on 25 June 1996.

The Law is structured as follows: Title I - Copyright, Title II - Neighbouring rights, Title III - Management and protection of copyright and neighbouring rights, Title IV - Application of the law. Transitional and final provisions.

The Law has introduced numerous new substantive regulations. As compared with the previous law, the legal copyright regime has been modified with respect to subject-matter, content and

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<sup>1</sup> French for the introductory statement and the replies, and English for the questions.

<sup>2</sup> As regards laws and regulations relevant to the areas of copyright and relative rights as notified by Romania under Article 63.2 of the Agreement, reference is made to documents IP/N/1/ROM/1 and IP/N/1/ROM/C/1.

<sup>3</sup> The minutes of these meetings can be found in documents IP/C/M/18 and IP/C/M/19.

duration, and these modifications are fully consistent with the provisions of the international conventions.

The works protected are those listed in the Berne Convention - Paris Act 1971, the criteria of eligibility for protection are those established by the same instrument, and the general duration of protection is 70 years, i.e. longer than that required by the Convention.

Protection extends to "original works of intellectual creation in the literary, artistic or scientific field, regardless of their manner of creation, or specific form or mode of expression", as provided by Article 7 of the Romanian Law, which is consistent with the provisions of Article 9 of the TRIPS Agreement. The provisions of Article 9 of the TRIPS Agreement are incorporated in Article 9(a) of Law No. 8 according to which "... shall not benefit from the legal protection accorded to copyright ... the ideas, theories, concepts etc.", as well as in Article 72(2) which states that "the ideas, procedures, operating methods, mathematical concepts and principles underlying any element in a computer program, including those underlying its interfaces" are not protected.

Computer programs are protected as literary works, under Article 7(a) of the Law, and in "any expression ... in any kind of language, whether in source code or object code", under Article 72(1) of the Law, in accordance with the provisions of Article 10 of the TRIPS Agreement.

Without prejudice to the rights of the author, the Romanian Law also protects derived works, including "collections and compilations of protected or unprotected material or data, including databases which, by reason of the selection or arrangement of their subject-matter, constitute intellectual creations", as provided by Article 8(b) of the Law, a provision which is consistent with Article 10.2 of the TRIPS Agreement.

Specifically as regards cinematographic works and computer programs, the authors or their assigns enjoy the exclusive right to authorize the commercial rental of the original or copies of their works, as provided for by Article 13(b) in conjunction with Article 14(2) and Article 73(c).

The duration of protection of a work generally extends over the entire life of the author and for 70 years after his death. In the case of works whose duration of protection has a reference point other than the life of the author, the duration of protection is:

- 70 years from the date of disclosure - for works disclosed under a pseudonym or without a mention of the author's name (Article 26);
- 70 years from the death of the last surviving co-author for works of joint authorship (Article 27.1);
- 70 years from the death of each co-author where the contributions of the co-authors are distinct (Article 27.2);
- 70 years from the date of disclosure for collective works. Where disclosure does not occur within 70 years of the creation of the work, the protection lasts 70 years from the said creation (Article 28);
- 25 years from the date of creation for works of applied art (Article 29).

These provisions are perfectly consistent with those of Article 12 of the TRIPS Agreement.

The Romanian Law provides for special cases in which the uses of the work constitute limitations on the exercise of copyright, while imposing conditions on these uses, namely "that they conform to proper practice, are not at variance with the normal exploitation of the work and are not

prejudicial to the author or the owners of the exploitation rights", which is consistent with the requirements of Article 13 of the Agreement.

For the first time in Romanian intellectual property law, Law No. 8/1996 recognizes and protects the neighbouring rights granted to three categories of holder protected by the Rome Convention of 1961, namely the rights of performers for their own performances, producers of sound recordings for their own recordings and television and radio broadcasting organizations for their own broadcasts.

The performer has the exclusive economic right to authorize the fixing of his performance, the reproduction of the fixed performance, the distribution of the fixed performance by sale, rental, lending or any other mode of transfer for a consideration or free of charge, the presentation in a public place or communication to the public of the performance, either unfixed or fixed on a physical medium, the adaptation of the fixed performance, and, finally, the broadcasting or transmission by television or radio of his rendering, either unfixed or fixed on a physical medium, or the retransmission thereof by wireless means, by wire, by cable, by satellite or by any other similar procedure (see Article 98 of Law No. 8/1996).

The producer of sound recordings has the exclusive economic right to authorize the reproduction of his own sound recordings, the distribution of his own sound recordings by sale, rental, lending or any other mode of transfer for a consideration or free of charge, the broadcasting or transmission by television or radio of his own sound recordings, or the retransmission thereof by wireless means, by wire, by cable, by satellite or by any other similar procedure or means of communication to the public, the presentation in a public place of his own sound recordings, the adaptation of his own sound recordings, and the importation into the territory of Romania of legally made copies of his own sound recordings (see Article 105(1) of Law No. 8/1996).

The producer also has the right, together with the authors and publishers and the performers, to remuneration for private copying.

For performers the duration of protection is 50 years from the first fixing or the first communication to the public, and for producers 50 years from the first fixing.

Television and radio broadcasting organizations have the exclusive economic right to authorize the fixing of their own radio or television programmes, the reproduction, the distribution by sale, rental, lending, ..., the retransmission, the communication in a place accessible to the public and the adaptation of their own programmes, as well as the importation into the country of legally made copies of their own radio or television programmes fixed on any kind of physical medium and the exclusive right to prevent the importation of copies made without their authorization of their own radio or television programmes fixed on any type of physical medium.

The above-mentioned rights are protected for 50 years from the first broadcast or transmission of the programme.

The Romanian law-makers have taken care to incorporate the provisions of international regulations. The Romanian Parliament recently ratified the most important international conventions in the field of copyright and related rights, namely:

- Law No. 76 of 14 April 1998 on the ratification of the Berne Convention for the protection of literary and artistic works - Paris Act 1971, as amended in 1979, published in Monitorul Oficial al României No. 148 of 14 April 1998;

- Law No. 77 of 17 April 1998 on the ratification of the Rome Convention 1961 for the protection of performers, producers of phonograms and broadcasting organizations, published in Monitorul Oficial al României No. 156 of 17 April 1998;
- Law No. 78 of 17 April 1998 on the ratification of the Geneva Convention 1971 for the protection of producers of phonograms against unauthorized duplication of their phonograms, published in Monitorul Oficial al României No. 156 of 17 April 1998.

It should also be pointed out that on 31 December 1997 Romania signed the two latest WIPO Treaties, namely the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty - Geneva 1996.

As for the enforcement of intellectual property rights, Romania has described the situation in document IP/N/6/ROM/1 of 15 October 1997.

## **II. REPLIES TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES**

1. *Article 147 of the Romanian Law on Copyright and Neighbouring Rights provides for certain conditions in relation to the protection of foreign owners of copyright and neighbouring rights. The previous Article, Article 146, sets out certain provisions which are linked to Romanian citizenship and/or the territory of Romania. Please clarify how these two Articles interact and whether and how they comply with Article 3 in conjunction with Article 65.2 of the TRIPS Agreement.*

The provisions of the Romanian Law do not institute any discrimination among owners of copyright and neighbouring rights.

Although the two Articles in question outline some possible situations, Romania, though benefiting from the provisions of Article 65.2, must apply the provisions of Article 3 of the TRIPS Agreement, which it already does. The national treatment referred to in Article 146 therefore applies to citizens of any country party to or member of international conventions, treaties or agreements to which Romania also belongs or is a party, including the Member countries of the WTO (even citizens of WTO Member countries that are not parties to the Berne Convention).

2. *Article 14.1 of the Law on Copyright and Neighbouring Rights provides that the term "reproduction" also includes "the making of an audio-visual recording of the work". Article 9.1 of the TRIPS Agreement in conjunction with Article 9.3 of the Berne Convention states that "any sound or visual recording shall be considered as a reproduction". Against this background, please clarify whether a sole sound recording or a sole video recording would be considered as a reproduction under Romanian law.*

Regrettably there was a translation error in the French and English versions of the Romanian law.

In the original Romanian version published in the Romanian "Monitorul Oficial", a copy of which is attached, the definition of "reproduction" in Article 14.1 is fully consistent with Articles 9.1 of the TRIPS Agreement and 9.3 of the Berne Convention because it also includes "any sound or visual recording of a work ...".<sup>4</sup>

3. *Please explain, whether and how compilations of data are protected under legislation (Article 10.2 of the TRIPS Agreement).*

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<sup>4</sup>The provision in its original language is available in the WTO Secretariat for consultation by interested delegations.

Compilations of data are protected under the Law on Copyright and Neighbouring Rights, Law No. 8/1996.

Article 8(b) of the Law provides that collections or compilations of material or data, whether or not protected, including databases, which, by reason of the selection or arrangement of their subject matter constitute intellectual creations are also protected by copyright as pre-existing works without prejudice to the rights of the authors of the original work which reflects the terms of Article 10.2 of the TRIPS Agreement, namely " ... without prejudice to any copyright subsisting in the data or material itself".

4. *Please clarify the effects of the distinction made between digital broadcasting and other types of broadcasting in Article 38, paragraphs 1 and 2 of the Law on Copyright and Neighbouring Rights.*

The original version of the Law on Copyright does not draw any distinction between the regime for authorizing digital broadcasting and other types of broadcasting. Article 38(1) provides that "Authorization to broadcast a work by wireless means shall also constitute authorization to transmit the work by wire, cable or any other similar process ..." subject to certain conditions, and subparagraph (2) of this Article stipulates that the authorization does not include digital transmission.

It is not therefore a question of digital broadcasting but of digital transmission for which the Law requires a separate authorization.

This is a regrettable mistake in the French and English translations of the Romanian Law which, unfortunately escaped our notice and does not appear in the original text.<sup>4</sup>

5. *Article 85, paragraph 2 of the Law on Copyright and Neighbouring Rights excludes photographs of letters, deeds, documents of any kind, technical drawings and other similar material from the legal protection by copyright. Please explain how this complies with Article 9 of the TRIPS Agreement in conjunction with Article 2, paragraph 1 of the Berne Convention which provides for the protection of photographic works, irrespective of the subject matter and the purpose for which they are made.*

As stated in Article 7(f) "photographic works and any other works expressed by a process analogous to photography" are protected under the Romanian Law, "regardless of their manner of creation, specific form or mode of expression and independently of their merit and purpose", which is fully consistent with Article 2.1 of the Berne Convention.

The Convention, however, leaves open the possibility of refusing to protect certain categories of photographs because they must also be "works of the mind" i.e. the product of intellectual creation, in this particular case in the artistic field.

Otherwise protection would go too far, even recognizing copyright for passport photographs produced automatically in a "photomat" for example.

Article 85(2) therefore excludes from protection photographs that do not involve any act of intellectual creation, for example, photographs of letters, documents, technical drawings or photographs of other similar material.

6. *Article 105 of the Law on Copyright and Neighbouring Rights lists the various rights granted to the producer of sound recordings. Please clarify whether and how such a producer enjoys the right to authorize or prohibit the indirect reproduction of their phonograms (Article 14.2 of the TRIPS Agreement).*

Article 105 of the Law on Copyright gives the producer of a sound recording *inter alia* the exclusive right to authorize the **reproduction** of his own sound recording. The Law does not therefore distinguish between direct and indirect reproduction. Consequently, according to the principles of law and the saying "*ubi lex non distinguit nec nos distinguere debemus*", it can be concluded that the producer's exclusive right covers all types of reproduction including indirect reproduction.

7. *Article 121 of the Law on Copyright and Neighbouring Rights provides that "retransmission by cable without the consent of the owner of rights and without payment of a remuneration shall be permitted only in the case of programs owned by public television and radio broadcasting organizations of national scope and also those of television and radio broadcasting organizations that are retransmitted by cable compulsorily in accordance with regulations in force". Please explain the scope and meaning of this provision.*

Title II of the Law deals with neighbouring rights and Chapter V thereof deals with television and radio broadcasting organizations. Section 1 of this Chapter concerns the exclusive rights of these organizations.

Article 113(1)(d), for example, provides that television and radio broadcasting organizations have the exclusive economic right to authorize "the retransmission of their own radio or television programmes by wireless means, by wire, by cable, by satellite ...".

Consequently, radio broadcasting and television organizations, as owners of neighbouring rights in their own programmes, must authorize retransmissions by cable by a cable operator.

The provisions of Article 121(4) mean that such organizations owning neighbouring rights do not have the right to authorize cable operators nor the economic advantage of exercising this right in two situations:

- (a) In the case of public television and radio broadcasting organizations of national scope, for at least the following two reasons:
  - (i) these organizations are financed under the budget and thus are indirectly financed by the population;
  - (ii) any family possessing a radio or television set must pay a "licence fee" which is directly paid to the public radio broadcasting and television services.

In addition, the price of cable transmission services would increase if cable operators also had to pay for the retransmission of public programmes and this would mean that the final users paid twice for the same programme.

- (b) Where the radio broadcasting and television organizations are not public but the regulations in force oblige cable operators to retransmit their programmes there is a counter-service situation similar to the reciprocal obligations imposed by the State. For the moment, no such regulations are in force.

### III. REPLIES TO QUESTIONS POSED BY JAPAN

1. *Please explain whether "computer programs" in Article 7(a) of the Copyright Law of Romania, which provides for the protection of computer programs, include programs in both source code and object code and please explain how the Copyright Law of Romania complies with Article 10.1 of the TRIPS Agreement in this respect.*

Article 7 of the Copyright Law of Romania defines the subject matter of copyright as "... original works of intellectual creation in the literary, artistic or scientific field, regardless of their manner of creation, specific form or mode of expression and independently of their merit and purpose ...". Subparagraph (a) of Article 7 provides a list of works in the literary field that are subject to copyright protection. The list is non-exhaustive. Nevertheless, computer programs are expressly included in this group of protected literary works.

In special provisions contained in Part II of Title I of the Law, under Chapter IX entitled "Computer Programs", Article 72(1) provides that "... the protection of computer programs includes any expression of a program, application programs and operating systems expressed in any kind of language, whether in source code or object code ...".

Computer programs are thus subject to the same legal regime as literary works, in conformity with the provisions of Article 10.1 of the TRIPS Agreement.

2. *Please explain whether "collections" in Article 8(b) of the Copyright Law of Romania, which provides for the protection of collections, include compilations of data in machine-readable form and please explain how the Copyright Law of Romania complies with Article 10.2 of the TRIPS Agreement in this respect.*

As worded, Article 8(b) does not differentiate between readable forms, as can be seen from Article 7 under which original works are protected "regardless of their manner of creation, specific form or mode of expression ...".

Nevertheless, in order to be protected, pre-existing works such as collections or compilations of material or data, whether or not protected, including databases, must meet the criterion of originality and must "... by reason of the selection or arrangement of their subject matter, constitute intellectual creations", as provided in Article 8(b).

Consequently, the provisions of Article 7 also apply to these "compilations" so the protection of "collections" includes "compilations of data in machine-readable form".

Moreover, Article 14(1) of the Copyright Law of Romania defines "reproduction" as the making of one or more copies of a work including "... its permanent or temporary storage by electronic means".

It is obvious that this form of storage is machine-readable.

This provision, taken together with Article 7 and Article 8(b), is consistent with the provisions of Article 10.2 of the TRIPS Agreement.

#### **IV. REPLIES TO QUESTIONS POSED BY THE UNITED STATES**

1. *Please explain whether and how Romanian law provides protection for works, phonograms and performances from other WTO Members, and whether and how it does so on the basis of national treatment, as required by TRIPS Article 3 (generally, with respect to all copyrights and neighbouring rights) and Article 9.1 (incorporating Berne Article 5(1)). In particular, please explain how national treatment is afforded with respect to the distribution of blank tape levies under Article 34 of the Romanian Law on Copyright and Neighbouring Rights.*

The provisions of the Romanian Law on Copyright and Neighbouring Rights apply, as provided for in Article 146, as the case may be, to works, performances, phonograms and radio and television programmes. In the case of foreign nationals who are owners of copyrights or neighbouring rights, Article 147 provides that they enjoy the protection provided for in the international conventions, treaties and agreements to which Romania is a party; otherwise, they enjoy

equal treatment with Romanian citizens provided the latter in turn enjoy national treatment in the States concerned. Accordingly, in the application of Articles 3 and 9.1 of the TRIPS Agreement, confirmed by Article 5.1 of the Berne Convention, Romania grants national treatment to the works of other WTO Members in accordance with Article 5, paragraphs 1 and 3, of the Berne Convention, Paris Act. With regard to performances and phonograms, national treatment is granted in accordance with Articles 4 and 5, confirmed by Article 2, paragraph 2 of the Rome Convention, as from the date of entry into force of the Convention for Romania following its accession.

Accordingly, for foreign owners of a right to compensatory payment for private copying, under the conditions laid down in Article 34(2) of Law No. 8/1996, only authors may claim a part of the sums levied, through their societies, which must conclude bilateral or unilateral agreements with similar societies for representation on Romanian territory in order to enjoy the right in question.

2. *Does Romania apply the "rule of the shorter term" to phonograms and performances from other WTO Members? If so, please explain how you justify such action under TRIPS Article 4.*

No, Romania does not apply the "rule of the shorter term of protection" to phonograms and performances from other WTO Members.

3. *Please explain whether and how Romania protects against both the direct and indirect reproduction of phonograms as required by TRIPS Article 14.2, including by digital transmission in the context of subscription or interactive services.*

Article 105, paragraph (1), of the Romanian Copyright Law gives the producer of a phonogram, *inter alia*, the exclusive right to authorize the reproduction of his own sound recording, and does not distinguish between direct and indirect reproduction. This means, in accordance with the Latin saw "*ubi lex non distinguit nec nos distinguere debemus*", that the producer's exclusive right covers reproductions of all kinds, including indirect reproduction.

Digital transmission is also protected by the exclusive right granted to phonogram producers in Article 105, paragraph 1(c), concerning "broadcasting or transmission by radio or television of their own phonograms, retransmission by wireless means, by wire, by cable, by satellite or by any other similar process, as well as by any other means of public communication.

4. *Please explain whether and how Romania provides full retroactive protection to works, phonograms and performances from other WTO Members, as required by TRIPS Articles 9.1, 14.6, and 70.2, each of which incorporate by reference or rely upon Berne Article 18. Please give the date back to which such protection extends with respect to each category of subject matter.*

The Romanian Law on Copyright and Neighbouring Rights provides in Article 149, paragraph 2, that "the protection of this Law also extends to works created prior to its entry into force, including software, phonograms, cinematographic and audiovisual works".

Paragraph 2 of the same Article stipulates that "the duration of rights to exploit works created by authors deceased prior to the entry into force of this Law, and the terms of protection for which have expired, is extended in accordance with the term of protection provided for in this Law. The extension shall produce its effects as from the entry into force of this Law".

There is no explicit stipulation concerning retroactive protection of performances.

The retroactive date calculated in accordance with the provisions of the Law to which the protection of various works extends retroactively is:



- 1 January 1927 for individual or collective works of which the author or last surviving co-author or each of the co-authors, as the case may be, died after that date;
  - 1 January 1927 for collective works disclosed after that date;
  - 1 January 1947 for computer programs of which the author died after that date;
  - 1 January 1947 for cinematographic works communicated to the public or created after that date;
  - 1 January 1972 for works of applied art created after that date;
  - 1 January 1927 for photographic works of which the author died after that date;
  - 1 January 1947 for phonograms of which the first fixation or publication took place after that date.
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