Greece

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1. Copyright treaties and conventions

Greece is a party to the following main international copyright treaties and conventions:

Common name	*Full name*	*Entry into force*
UCC	Geneva Universal Copyright Convention	October 17 1962
WIPO Convention	WIPO Convention Establishing the World Intellectual Property Organization	August 1 1975
Berne Convention	WIPO Berne Convention for the Protection of Literary and Artistic Works	August 1 1975
Brussels Convention	Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite	April 22 1991
Rome Convention	Rome International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations	June 30 1992
Geneva Convention	Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms	June 16 1993
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights (Greece is a member of the World Trade Organization)	February 9 1995
WCT	WIPO Copyright Treaty	September 26 2003
WPPT	WIPO Performances and Phonograms Treaty	September 26 2003

	Paris Convention on the Protection and Promotion of the Diversity of Cultural Expressions	December 22 2006
	Paris Convention for the Safeguarding of Intangible Cultural Heritage	December 22 2006

2. What can be protected?

Any work of literary, artistic or scientific nature, which is original, can be protected under copyright law. Copyright protection in Greece is not subject to any formalities and applies to every original work of speech, art or science, on its creation and independent of its form, expression or purpose. Protected creations include, amongst others, written or oral texts, musical compositions, theatrical plays, audiovisual works, visual art works, databases and computer programs.

2.1**How is a protected "work" defined?**

Any original intellectual creation of speech, art or science qualifies as a "work" [Article 2 (1) Law 2121/1993].

2.2**What are the criteria for protection?**

In order to be protected, the work must fulfil the following criteria:

- It must have an intellectual content (even a conceptual one, not simply verbal/artistic) – that is, it must be the product of the creator's mind/thoughts and the result of a human creative action. The work must in fact be the result of human creativity.
- It must have a form (i.e., the intellectual content needs to be expressed via means that can be perceived by others/externalised).
- It must have originality/individuality/statistic singularity, albeit that the level of originality need not be particularly high.

2.3Specific works

Specific works include the following:

- literary works (i.e., written or oral works, such as poems, speeches, scientific studies, lectures, instructions of use, interviews, cinematographic and theatrical scripts, etc);
- dramatic works (i.e., theatre plays, operas, operettas, musicals etc);
- musical works (i.e., any kind of melodies, rhythmic sequences or harmonies with or without words, but not independent/single notes or sounds);
- artistic works (i.e., painting, sculpture, architectural, photographic works, illustrations etc);
- sound recordings (i.e., musical, voice or other sounds recorded in any kind of tangible medium);
- films (i.e., movies, documentaries, advertisements, series, series episodes etc, regardless of their length or their method of execution);
- typographical arrangements;
- databases (i.e., such as the collection of data, works or other independent elements organised in a systematic or methodical way. Their protection is not extended to their content, the latter being the object of separate rights); and
- other types of work (i.e., translations, collections of folk tradition expressions, remakes or adjustments of plays etc, without prejudice to the protection of the rights of the original works).

3. **Formalities for protection**

According to both national law (i.e., Law 2121/1993, Article 6 paragraph 2) and international law (i.e., Berne Convention, Article 5 paragraph 2), entitlement to and exercise of copyright and copyright-related rights are not subject to any formalities. As a result, and in contrast to other intellectual property rights, there is no formal procedure provided for registering the author's rights over a work. However, submitting a work to a Notary Public is

commonplace as a practical and acceptable way for the establishment of a certain date of creation of the work and its rightholder and, in the event of legal proceedings, provides useful evidence on the creation date of the ownership or the exploitation of the rights over the work.

4. **Duration of protection**

Generally, copyright protection lasts for the lifetime of the author, plus 70 years after his death [Article 29 (1), Law 2121/1993]. The exceptions to this rule are set out below. Copyright in works of joint authorship lasts for the lifetime of the last-surviving author, plus 70 years after the death of the said author (Article 30, Law 2121/1993).

Type of work	*Duration of protection*	*Comments*
Literary	Lifetime plus 70 years	From January 1 of the year following the author's death
Dramatic	Lifetime plus 70 years	From January 1 of the year following the author's death
Musical	Lifetime plus 70 years	From January 1 of the year following the composer's death
Artistic	Lifetime plus 70 years	From January 1 of the year following the artist's death
Sound recordings	50 years	From January 1 of the year following fixation of the recording
Films	Lifetime plus 70 years	From January 1 of the year following the death of the last-surviving of the following: the principal director, the author of the screenplay, the author of the dialogue and the composer of the soundtrack (provided the soundtrack was composed specifically for that work)
Typographic arrangements	Lifetime plus 70 years	From January 1 of the year following the creator's death
Databases	15 years	From January 1 of the year following completion
Performances	50 years (or the performer's death, whichever is later)	From January 1 of the year following the performance
Broadcasts	50 years	From January 1 of the year following first transmission

5. **Ownership of works**

5.1 ***Initial ownership***

The initial owner of the copyright (i.e., the economic right) and the moral right in a work (Article 6, Law 2121/1993) will be the natural person, who is the author of the work. For audiovisual works, the principal director will be deemed to be the author (Article 9). Greek law provides for only one exception to the general rule that only natural persons can be the initial owners of copyright: the case of anonymous or pseudonymous works, where a company (lawfully) publishes the relevant work. Until the natural person (i.e., the author) reveals his identity, the company which publishes the work is deemed to be the initial owner of the moral rights and copyrights (economic rights) to the work.

5.2 ***Commissioned works and works made in the course of employment***

Where a work is created by an employee in the execution of an employment contract, the initial holder of the copyright and moral rights in the work is the author of the work (i.e., the employee). Unless provided otherwise by contract, only such economic rights in copyright as are necessary for the fulfilment of the purpose of the contract are transferred by law to the employer (Article 8, Law 2121/1993). Moral rights remain with the employee. Automatic assignment is not deemed to cover forms of exploitation which were unknown at the date of the employment contract. Assignment of future copyright can be included in an employment agreement. However, such assignment must be limited to work created within the scope of the employment agreement and cannot cover future means of exploitation or those which were unknown at the time of the conclusion of the employment agreement, or means of exploitation beyond the scope of the normal business activity of the employer.

The copyright in a computer program created by an employee in the execution of the employment contract or following instructions given by his employer is transferred by law to the employer, unless otherwise provided by contract (Article 40).

The copyright in works created by employees in the course of any employment relating to the public sector or a public law entity is by law transferred to the public sector employer, unless provided otherwise by contract (Article 8).

The same general principle applies with regard to commissioned work (i.e., it is the natural person creating the work, who is the initial owner and rights are transferred to the entity commissioning the work by virtue of the commission contract). The contract defines the extent of the transfer of rights, subject to the limitations imposed by the provisions of Greek copyright law (e.g., that moral rights cannot be transferred).

5.3 ***Assignment and licensing***

As a general rule, copyright (economic right) can be transferred between living persons or by will, whereas moral rights cannot be contractually transferred or assigned *(see section 7 below)*.

Contracts for the transfer or licensing of copyright must be made in writing; otherwise, they will be deemed null and void. Such nullity, however, can only be invoked by the author (Article 14, Law 2121/1993). In practice, no third party can claim the acquisition of rights in and to the work in the absence of a written agreement, and only the author can claim to have transferred or licensed the work (in most cases for the payment of the contract amount or royalties), even if there is no written agreement. Sublicences are possible, if permitted under the main licence agreement.

The transfer of copyright and exploitation of contracts or contracts licensing the exploitation of that right can include clauses restricting the number or extent of the rights conferred, their scope and duration, the geographical application and the extent or the means of exploitation. Exploitation contracts and licences can be exclusive or non-exclusive. In the event of any doubt, such contract or licence will be deemed to be non-exclusive (Article 13). If the duration of the transfer or exploitation or licence contract is not specified, such duration is deemed to be limited to five years, provided that this is not contrary to established business practice. If the geographical application of the transfer or exploitation or licence contract is unspecified, the transfer / licence will be deemed to apply in the country, in which it was concluded (Article 15, Law 2121/1993).

As a general rule, the fee payable to the author by the other contracting party to legal agreements relating to the transfer or licence of all or part of the copyright, the granting of the exploitation or for the exploitation licence is mandatorily determined as a percentage, freely agreed between the parties. The fee may be agreed as a lump sum only in the exceptional cases described in law:

- when it is practically impossible to establish the basis for the calculation of a percentage fee or when there are no means of monitoring the implementation of a percentage arrangement;
- when the expenditure required for the calculation and the burden of monitoring the implementation of a percentage is likely to be out of proportion to the fee to be collected; and
- when the nature or the conditions of the exploitation make the implementation of a percentage impossible, notably when the author's contribution is not an essential element in the intellectual creation as a whole, or when the use of the work is secondary in relation to the object of the exploitation.

The obligatory percentage arrangement of the fee does not concern works created by employees in the execution of the employment contract, computer programs or advertisement in any form (Article 32, Law 2121/1993).

In particular, with regard to related rights, performers, producers of sound and visual recordings, and radio or television organisations can assign or license certain related rights (Articles 46, 47, 48, Law 2121/1993). "Related rights" are those of persons who in any way act or perform works, such as actors, musicians, singers, dancers and others, who are not "authors" of the work. Related rights are commonly assigned or licensed. Examples include the reproduction by any means and in any form of the fixation of their performance, the distribution to the public of the fixation of their performance by sale or other means, and the radio and television broadcasting of their performance.

Authors and beneficiaries of related rights can assign the administration and/or protection of their rights to collecting societies established exclusively to engage in the functions of administering and protecting all or part of the copyright [Article 12 (1), Law 4481/2017].

6. Infringement

6.1 *Primary infringement*

(a) **Derivation/Causation**

Copyright confers upon the author the right to authorise or prohibit derivative works, including the translation of their work and the arrangement, adaptation or other alteration of their work (e.g., variations, remixes, remakes, transliteration etc) according to Article 3 (1b, 1c), Law 2121/1993.

In order to establish infringement, sufficient similarity and a causal connection between the original and the derivative work must exist.

The creation of a derivative work based on previous copyrighted original work does not as such require a licence by the author or beneficiary of the copyrighted original work. However, a licence by the author or beneficiary of the copyrighted original work is in principle required for the economic exploitation of the derivative work. Any infringement of the copyright of the derivative work also constitutes an infringement of the copyright of the original copyrighted work.

For the commercial exploitation of a derivative work, both a licence by the author of the original copyrighted work and a licence by the author of the derivative work are required.

(b) Similarity

There is no general rule as to the degree of similarity required between the original work and the allegedly infringing one. This will essentially be a case-by-case exercise, where many factors are relevant, including the number and extent of similar elements, the weight of such similar elements in identifying the original work, as well as the exploitation of the reputation of the original work. Depending on the factual circumstances of each case, even minor similarities could suffice to establish infringement. Although there are no case law rules regarding the application of the similarity test, Greek courts tend to "break down" the work into its main features and seek similarities between the original and the allegedly infringing work. For example, in the case of a film/TV series script, the Court would tend to identify the main characters and key plot design. If the common elements are trivial, then more detailed similarities would be required for an infringement to be established.

(c) Substantiality

Substantiality is assessed in the same methodological way as similarity. The issue of substantiality mainly arises in cases of copyright in computer programs and the sui generis right of the maker of a database. A definition of substantiality is not provided directly by the law, and it is therefore considered in case law on the basis of the special circumstances of each case.

More specifically, a person who has a right to use a copy of a computer program, is not allowed to use any information, which is obtained through permitted decompilation for interoperability purposes, for the development, production or marketing of a computer program substantially similar in its expression to the initial program, or for any other act which infringes copyright (Article 43(2), Law 2121/1993).

Further, the creator / maker of a database has the right to prevent extraction and/or reutilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database [Article 45 A(1), Law 2121/1993]. Any person who proceeds to extract and/or reutilise the whole or of a substantial part of the contents of the database without the authorisation of the author, may be held as punishable by imprisonment of at least one year and a fine ranging from €3.000 up to €15.000 [Article 66 (9), Law 2121/1993].

(d) Acts of primary infringement

Copyright is infringed by any act or omission of a third party, which violates and/or interferes with the exercise of any of the rights granted by copyright legislation to the copyright holder, to the extent that such act is not made with the consent of the copyright holder and no private copy or other defence applies.

Primary infringement of copyright can occur by violating the authors' rights, such as reproduction rights, right of communication to the public, distribution rights, moral rights, or the related rights of the performers and producers.

Law 2121/1993 on copyright provides for specific measures to prevent infringement (Chapter X), legal protection actions such as injunction measures and precautionary evidence (Chapter XI), and civil, administrative and criminal sanctions (Chapter XI). In short, civil legal remedies include injunction and/or damages (both pecuniary and non-pecuniary). Greek law facilitates the calculation of damages by adopting the rule that pecuniary damages cannot be less than double the fee usually or legally paid for the exploitation that the defendant carried out without permission. Criminal sanctions include imprisonment from one to 10 years and fines ranging from €2,900 to €60,000. Article 65A of Law 2121/1993 provides for administrative penalties (ie, fines) for copyright infringement.

6.2 ***Secondary infringement***

Greek law does not provide for liability for secondary / contributory infringement of copyright and intellectual property rights in general. However, a claim for secondary liability could be based on the general legal principles of Greek law (ie, tort). In this case, it must first be established that the primary actor is indeed liable for primary infringement (joint tort). This would be a case of joint liability, and damages would have to be paid jointly. For instance, a joint tortfeasor could be any person/entity providing the technical means for the copyright infringement (e.g., a copy-centre business - *see section 8.2 below*).

According to Article 64 (A) of Law 2121/1993 [implementing article 8 (3) of Directive 2001/29/EC] and article 65 (1) of Law 2121/1993 (implementing article 11 of Directive 2004/48/EC), right holders in Greece can apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

Moreover, Article 66E of Law 2121/1993, as further complemented by Presidential Decree ΥΠΠΟΑ/ΓΔΔΥΗΔ/ΔΔΑΑΔ/ΤΥΕΦΤΠ/42269/3638/3476/196 *(referred herein after as the "PD", as amended and in force)*, has introduced an administrative notice and takedown procedure specifically for copyright infringements on the Internet; this procedure does not apply to cases of infringement committed by end users (e.g. downloading, streaming, peer to peer sharing) and focus is primarily on illegal file sharing / streaming and subtitles websites. The PD established a Committee responsible for all actions in relation to the said procedure. It is noted that typical prerequisite for the admissibility of the takedown application submitted to the Commission is that the applicant has previously made use of the notice-and-takedown procedure (if any) hosted by the ISP/platform (e.g. social media platform) and the matter has not been resolved "within reasonable time" (no further clarification is provided on the meaning of "reasonable").

Furthermore, right holders can also apply for an injunction against intermediaries, including internet service providers (ISPs) (as referenced in the E-Commerce Directive 2000/31) whose services are used by a third party to infringe a copyright or related right (Article 64 A, implementing Article 8 paragraph 3 of Directive 2001/29). The same also applies for the sui generis right of a database maker. This provision should be examined in conjunction with Presidential Decree 131/2003 (implementing 2000/31 Directive 2000/31), which provides mere conduit, caching and hosting "immunities" for ISPs, when they have no actual knowledge of the infringement and they act expeditiously to remove or disable access to any infringing material once they acquire such knowledge. "Actual knowledge" and "expeditious action" are not further defined in statutory or case law.

In any event, Article 17 of Presidential Decree 131/2003 stipulates that, in circumstances of possible infringement, the court of first instance can order injunctive or any other appropriate measures (in particular, precautionary evidence) in order to terminate or prevent the infringing act.

(a) Knowledge requirement

As noted above, knowledge is required to establish the liability of ISPs under the provisions of Presidential Decree 131/2003.

(b) ***Acts of secondary infringement***

As noted above, secondary infringement is not provided for under Greek Law.

7. **Moral rights and performers' rights**

7.1 ***Moral rights***

According to Law 2121/1993, in addition to the protection of copyright (i.e., the economic rights and interests of the author), moral rights are subject to protection. Moral rights are a separate form of right, independent of the economic right, and they remain with the author even after the transfer of the copyright, as they are a guarantee of the personal link between the author and the work. The object of protection of the moral right is the personal link which exists between the author and his works. It follows that, although the right of personality is a single and unique right focusing on the personality of the author, the moral right focuses on the protection of the aforementioned personal links existing between the author and his works, and therefore there may be numerous moral rights (each

relating to one work of the author). More specifically, the law lists five moral rights, or, in other words, five distinctive aspects of the moral right of authors.

In short, moral rights confer the following powers upon the author (Article 4 paragraph 1, Law 2121/1993):

- the right to decide on the time, place and manner in which the work shall be made accessible to the public (i.e., publication);
- the right to demand that his position as the author of the work be acknowledged and, in particular, to the extent that it is possible, that his name be indicated on the copies of his work and noted whenever his work is used publicly; or conversely, if he so wishes, that his work be presented anonymously or under a pseudonym;
- the right to prohibit any distortion, mutilation or other modification of his work and any offence to the author due to the circumstances of the presentation of the work in public;
- the right to have access to his work, even when the copyright in the work or the physical entity of the work belongs to another person (in which latter case, the access must be effected with minimum possible inconvenience to the right holder); and
- in the case of a literary or scientific work, the right to rescind a contract transferring the economic right or an exploitation contract or licence of which his work is the object, subject to payment of material damages to the other contracted party for the pecuniary loss sustained, when the author considers such action to be necessary for the protection of his personality because of changes in his beliefs or due to particular circumstances. In such a case, the rescission takes effect after the payment of damages. If, after the rescission, the author again decides to transfer the economic right or to permit exploitation of the work or of a like work, he must give the former other contracted party the opportunity to reconstitute the old contract with the same terms or with terms similar to those which were in force at the time of the rescission.

Furthermore, the law (Article 50, Law 2121/1993) also provides a separate moral right for performers of works, with respect to their performances. However, this is more limited than the moral rights of authors. More specifically, performers are only granted the right of attribution and the right to prohibit any distortion or modification of their performances (i.e., corresponding to rights described in the second and third bullet points above).

Owing to its legal nature (i.e., an absolute right), the moral right of the author cannot be transferred between living parties, but may be transferred to the author's heir(s) under Article 12 paragraph 2 of Law 2121/1993. (This article also applies by analogy to the moral rights of performers.) The heir(s) should exercise the right according to the author's clear intentions, provided that such intentions have been explicitly expressed in writing. The absolute nature of the right means that it may be invoked against, or become infringed by, anybody – not necessarily a party to an agreement with the author (and, in the latter case, liability would also overlap with breach of contract). The moral right extends to cover all aspects/rights, which derive from the personal relationship between the author and his work. Furthermore, its absolute nature means that the author can object/oppose to amendments to his work, even if such amendments could be objectively justified.

As the moral right is a specific aspect of the more general right of personality, it was in the past protected under Article 57 et seq. of the Greek Civil Code. However, the introduction of Law 2121/1993 established the independent nature of copyright and its economic and moral rights (Article 1 paragraph 1, Law 2121/1993) and, therefore, the moral right can now be invoked independently, without reference to the right of personality. In this context, case law suggests that the enforcement of moral rights cannot rely on the general application of the provisions for the protection of personality (e.g., Athens Court of Appeals 8138/2000, Athens Multi-member Court of First Instance 2028/2003, Athens Multi-member Court of First Instance 14751/1996), but solely on the application of Law 2121/1993. None the less, the general provisions protecting the right of personality could theoretically be used as a legal substitute for the protection of the author (effectively providing similar protection to that granted by moral rights, such as attribution) in cases where intellectual property law cannot apply – for example, in cases where a work does not meet the criteria for protection under Law 2121/1993 (such as scientific discoveries and theories). Furthermore, a trend in legal theory suggests that the right of personality and moral rights can be asserted in parallel, if only when the factual circumstances meet the prerequisites for separate application of both Law 2121/1993 and Article 57 et seq. of the Greek Civil Code *(which does not often occur)*.

The initial right holder of the moral right is always a physical person (i.e., the creator/author of the work). The only exception to this general rule is the case of an anonymous or pseudonymous work, where a company (lawfully) publishes the said work. Until the individual who is the real / authentic author reveals his identity, the company publishing the work will be deemed to be the initial right holder of the moral and economic rights to the work (Article 11 paragraph 1, Law 2121/1993). However, the extent to which the moral right can be exercised by the company or natural person deemed to be the initial right holder of the pseudonymous/anonymous work is disputed (e.g., in terms of claiming authorship of the work or declining or accepting further modifications to the work in question, as such modifications are intrinsically related to the real author and the creative process).

The duration of the moral right is the same as that for copyright – 70 years following the death of the author (Article 29 paragraph 1, Law 2121/1993). Following the expiration of copyright, the state as represented by the Minister of Culture may exercise the rights relating to the acknowledgement of the author's paternity and the rights

relating to the protection of the integrity of the work stemming from the moral right (Article 29 paragraph 2, Law 2121/1993).

The moral right cannot be waived in its entirety. However, it is possible contractually to limit its exercise, provided that the contract is made in writing. Whether such contractual limitations will withstand judicial scrutiny will depend on whether they touch on the ”inalienable core” of the moral right (a notion, which, according to relevant case law, comprises at least the right of publication and right of attribution). If they do so, they will be null and void as they would be contrary to public morality (Articles 178 to 179 of the Greek Civil Code). On the other hand, legal theory and case law have also accepted that moral rights may be asserted abusively, in which case such exercise would be unlawful, pursuant to Article 281 of the Greek Civil Code – *for example: in cases of extreme contradictory behaviour on the part of an author (i.e., in the case of an assertion of moral rights following a prolonged period of tolerance of serious restrictions/limitations thereof); or, in cases where the unjustified assertion of a moral right of one co-author prohibits the exercise of copyrights and moral rights of the remaining co-authors; or, where an architect denies any modifications to his architectural construction, despite a clear danger of collapse.*

7.2 ***Performers' rights***

The term “‘performers”, under Law 2121/1993 (Article 46) includes all persons, who act or perform works, such as actors or singers (i.e., including, but not limited to, chorus singers, dancers, puppeteers, shadow theatre artists, variety performers or circus artists).

This definition does not, however, include individuals who have contributed to the organisation or technical execution or interpretation of the work (e.g., directors of an operatic performance, make-up artists in a theatre play, lighting and sound technicians etc) since, in principle, they do not influence the interpretation or the execution of the work.

As stated above, performers have a separate moral right (Article 50, Law 2121/1993) to the full acknowledgement and credit of their status and to prohibit any alteration or distortion of their performances. Furthermore, their moral right is non-transferable between living parties, but transferable to the performers' heirs.

The fact that a work is no longer protected, following the expiration of the relevant period of protection, does not interfere with performers' rights in relation to their performance in such work. However, the latter should, of course, fulfil the criteria of a performance.

Article 46 of Law 2121/1993 details performers' rights to license their performance. It provides performers, during their lifetime, with a right to authorise or prohibit, amongst others, the fixation, reproduction, distribution (by sale or other means), rental, public lending, or broadcast of their performance by any means and in any form. This right cannot be waived. However, it may be entrusted to a collecting society (as provided for by the law) and may also be exercised by an ensemble of performers via a designated representative.

On the other hand, performers shall be presumed to have authorised acts relating to their performance (such as those described above) when entering into an employment contract (unless there is explicit and contractual agreement to the contrary). However, performers have the right at all times to be remunerated for each act, regardless of the form in which their performance is exploited. Specifically, they have a right (which cannot be waived) to equitable remuneration for rental, in the event that they have authorised a sound, visual or audiovisual recording producer to rent out recordings that include their performance.

As regards sound recordings used for a radio or a television broadcast, performers are entitled to a single and equitable payment for their performances carried on such recordings. (Producers of recordings are also entitled to receive such remuneration.) Though the right to receive reasonable remuneration is not assignable, the respective negotiations, agreements and payments are handled by collecting societies.

8. **Defences**

8.1 ***Fair dealing/use***

Being strongly influenced by the French origins of *droit d'auteur*, the Greek legislative framework for the protection of intellectual property does not provide for a fair-use or fair-dealing doctrine. Instead, following the EU Copyright Directive (2001/29/EC), Law 2121/1993 on Intellectual Property provides for a finite number of specific exceptions from limitations to the rights of the authors and owners of copyright related rights. These exceptions should always be viewed in the light of the ”three-step test” of the Berne Convention and, therefore, their application should not conflict with the normal exploitation of the work and should not unreasonably prejudice the legitimate interests of right holders. The exceptions are listed under Chapter IV of Law 2121/1993.

8.2 ***Private use***

The private use/private copying exception is provided for in Article 18 of Law 2121/1993. This exception covers only the act of reproduction and not the act of making the copyrighted material available to the public. According to the exception, reproduction for private and non-commercial purposes is allowed without the prior permission of the owners and without a fee. (However, there may be a fee where technical means (e.g., DVDs, hard disks over 4 GB of capacity, tablets, smartphones) are used. In such cases, a private copying levy – "fair compensation" – is imposed on the sellers/distributors of the copying equipment, the proceeds of which are channelled to the copyright owners via collecting organisations). The Berne three-step test also applies in this case.

More specifically, the defence permits a person to make a reproduction of a lawfully published work for his own private use, without the consent of the author and without payment. However, such permission will not apply when the act of reproduction is likely to conflict with normal exploitation of the work, or to prejudice the author's legitimate interests *(e.g., the photocopying of a book in its entirety)*.

Under the legislation, "private use" does not include any use by an enterprise, authority or an organisation. However, the term is not further defined in Greek copyright law. There is some debate regarding the scope of the private-use exception, as there is a view that private use does not in principle refer to the purpose of the use (e.g., scientific, research, educational, professional) but the context in which such use is made. According to this view, the exception should, therefore, include every use within the user's personal sphere, even if it is not strictly "'private". For example, photocopies of a scientific article made by a doctor would fall under the protective scope of the exception, even though such use would be classified as professional use, or even though the act of copying is not made at the premises of the user.

Although there has been no relevant case law, most scholars agree that the exception permitting reproduction for private use does not extend to copies of a work made by an illegal source. It is also disputed whether the private-copy exception can be invoked in cases where the copy is carried out by or with the technical assistance of a third party. Although some legal authorities and the explanatory report on Law 2121/1993 maintain that the copy must be made by the user and with no additional technical support by a third party, some scholars have expressed the opposite view (i.e., that copying made with the technical assistance of a third party is still reproduction for private use, especially regarding reproduction of printed works), in light of the fact that the technical means required for the reproduction of printed works are not easily possessed by the average user. It is doubtful, though, whether this view can be supported for audiovisual works (given that digital reproduction means are popular among average users).

In addition, Decision 4169/2005 of the Athens Court of Appeal has tipped the balance in favour of a restrictive scope of application for private copying. According to this ruling, private copying is considered lawful only if:

- it is carried out by the user, and not by a third party;
- it is made for private use (i.e., only within the immediate social circle of friends and family);
- the use is not made in the context of an enterprise, authority or an organisation; and
- the reproduction does not harm the normal exploitation of the work or the lawful interests of the copyright owners.

In this context, the court considered that a copy-centre business which photocopied copyrighted material (whole books) at the request of its clients infringed the reproduction rights of the copyright owners. Although the private-copy exception was invoked by the defendant, the court turned down the argument, ruling that the exception could not apply in the circumstances of the case, since the act of reproduction was performed in the context of an enterprise and because the copying of whole books does not pass the three-step test as it impedes the normal exploitation of works by copyright owners.

8.3 ***Internet safe harbours***

With regard to the three "internet safe harbours" created for providers of information society services by Directive 2000/31/EC *(referred hereinafter as the "E-Commerce Directive")*, the Directive's relevant provisions have been transposed with no significant changes into Greek law by Presidential Decree 131/2003.

(a) ***Mere conduit***

The law protects providers of information society services from liability regarding illegal or harmful content which is transmitted through their services, on condition that (Article 11 paragraph 1, Presidential Decree 131/2003) the relevant provider:

- does not initiate the transmission;
- does not select the receiver of the transmission; and
- does not select or modify the information contained in the transmission.

Furthermore, the above-mentioned acts of transmission and of provision of access include the automatic, intermediate and transient storage of the information transmitted insofar as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is "reasonably" necessary for the transmission.

(b) ***Caching***

The scope of the relevant provision (Article 12, Presidential Decree 131/2003) follows the wording of the E-Commerce Directive and does not extend to cover all acts of caching. For instance, it does not cover the automatic, intermediate and transient storage of the information for the sole purpose of carrying out the transmission in the communication network, as this is covered by Article 11; nor does it cover local caching in users' terminal equipment (as this is not performed by a provider of information society services). Instead, the specific provision is limited to acts of proxy/second-level caching, where the reproduction of information takes place in an intermediary server by the provider of information society services.

In this context, the service provider is not liable for the automatic, intermediate and temporary storage of information which is carried out for the sole purpose of achieving more efficient onward transmission of the information to other recipients of the service upon their request, provided the following conditions are met:

- the provider does not modify the information;
- the provider complies with conditions on access to the information;
- the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information; and
- the provider acts expeditiously to remove or to disable access to the stored information upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network or access to it has been disabled or that a court or an administrative authority has ordered such removal or disablement.

(c) ***Hosting***

The wording of Article 14 of the E-Commerce Directive has basically been transposed to Article 13 of Presidential Decree 131/2003 without any significant changes *[to date, there has been little case law providing clarifications or implementation guidelines on the hosting defence provision, with the exception of Decision 4980/2009 of the Multi-member First Instance Court of Piraeus, ruling that the hosting defence can apply in relation to blogs]*. It is an undisputed fact, however, that e-commerce safe-harbour provisions for intermediaries can be invoked in civil claims between companies and cover cases of potential infringement of intellectual property rights of third parties.

In order for an information society service provider to qualify for the hosting safe-harbour provision, the following requirements must be met:

- The provider should not have obtained "'actual knowledge" of the existence of any illegal content in the provider's servers (e.g. if unauthorised content is posted or stored to the servers of the provider, and the provider actively monitors the content that appears on its service). If the provider is engaged in content moderation and is technically able to identify the illegal nature of such content, then it is possible that a Greek court would deem that the provider obtains "actual knowledge" of such illegal information and is therefore obliged to prevent access to such content.
- Upon obtaining actual knowledge, the provider should act "expeditiously" in order to remove the infringing content.

8.4 ***Temporary copying***

Transposing Article 5 paragraph 1 of Directive 2001/29/EC *(referred herein after as "the Copyright Directive"*), Article 28 B of Law 2121/1993 on intellectual property (as inserted by law 3057/2002) provides for an exception to the reproduction right, for acts of temporary copying which are transient or incidental and constitute an integral and essential part of a technological process and whose purpose is to allow:

- a transmission in a network between third parties by an intermediary; or
- lawful use of a work or other subject matter.

The said acts should not have been carried out for a financial motive.

8.5 ***Other key defences***

In addition to the "private copy / use" exception, which aims at striking a balance between the legitimate interests of copyright owners and individual users, Law 2121/1993 includes a number of exceptions / limitations to copyright, in favour of specific groups or society as a whole. All these exceptions are granted, subject to the scrutiny of the Berne three-step test.

The exceptions are as follows:

- Use for the purpose of informing the public (Article 25, Law 2121/1993). The underlying purpose of this exception is to allow the public to receive news information through the media.

- Reproduction of a work in school books and anthologies (Article 20, Law 2121/1993). Such reproduction should only cover a small fraction of the creator's works, and the source of the extract must be duly referenced. The exception covers only reproductions in print. Furthermore, it does not apply to the writing, publishing or circulation of books which are distributed for free, as the latter are covered by Legislative Decree 749/1970.
- Reproduction for teaching purposes (Article 21, Law 2121/1993). This exception allows for the reproduction of small extracts of works legally published *(in newspapers or journals)*, solely for teaching purposes within an educational institution. As for the exception in the second bullet above, the source of the work must be duly referenced.
- Reproduction by libraries and archives (Article 22, Law 2121/1993). Not-for-profit libraries and archives which possess a copy of the work can reproduce an additional copy for use in their establishments or for transfer to other not-for-profit libraries.
- Reproduction of film works (Article 23, Law 2121/1993). The reproduction of film works is allowed for the purpose of preservation in the national film archive.
- Reproduction for judicial or administrative purposes (Article 24, Law 2121/1993).
- Use of images of works in public spaces (Article 26, Law 2121/1993). This exception allows for the occasional display and communication by the media of images of artworks, works of applied arts, photographs and architectural works, made to be located permanently in public places.
- Public performance or execution of a work on special occasions (Article 27, Law 2121/1993), such as official ceremonies, and in the context of activities of educational institutions, by the institution's personnel and students, on condition that the audience comprises such students and their parents, and/or those associated with the institution's activities.
- Display and reproduction of artworks to the public (Article 28, Law 2121/1993). This exception grants museums which own the material carriers *(e.g., paintings, sculptures etc.)* into which artworks have been incorporated the right to exhibit those works to the public on museum premises, or during exhibitions organised in museums. Furthermore, it allows for the presentation of an artwork to the public and its reproduction in catalogues to the extent necessary to promote the sale of such artworks.

9. **Enforcement of foreign copyright**

Being a signatory state to the Berne Convention for the Protection of Literary and Artistic Works, Greece recognises the copyright of works of authors from other signatory countries in the same way as it recognises the copyright of its own nationals (this includes the works of individuals who, although they are not a national of another signatory state, have their usual residence in another signatory state, as well as works which are first published in a signatory state or at least simultaneously published in a signatory state and a third state). It follows that, for countries which are members of the Berne Convention, Greek law will apply to anything published or performed in Greece, regardless of where it was originally created.

Under Article 67 of Law 2121/1993, copyright in a published work is governed by the legislation of the state in which the work is first lawfully made available to the public, whereas copyright in unpublished works is governed by the legislation of the state of which the author is a national. Similarly, related rights are governed by the legislation of the state in which the performance is realised, or the state where the recording is produced, or where the broadcast is transmitted. The said national law governs the determination of the subject matter, object, content, duration and limitations of the right, with the exception of any licence agreement for exploitation of the right. In contrast, the protection and enforcement of a right is subject to the law of the state in which protection is sought.

These provisions apply only for matters which are unregulated by international treaties to which Greece is a signatory state. In the case of third states which are not connected with Greece through an international treaty for the protection of intellectual property, these provisions apply only if the state the law of which should apply provides equivalent copyright protection to works which first became available to the public in Greece, or to related rights deriving from acts which took place in Greece.

Particularly with regard to intellectual works created by citizens of the European Union Member States, the application of private international law rules laid down by the Berne Convention should not undermine Article 18 of the Treaty on the Functioning of the European Union ("TFEU"), which prohibits any discrimination on grounds of nationality.