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# Legal Bulletin



## Intellectual Property Law

1. Law No. 69/2022 amending and supplementing Law No. 8/1996 on copyright and related rights

### Important amendments regarding copyright and related rights

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Law No. 69/2022 amending and supplementing Law No. 8/1996 on copyright and related rights (“**Law No. 69/2022**”) was published in the Official Journal of Romania, Part I No. 321 of 1 April 2022 and, with the exception of a few provisions which will become applicable 30 days or 6 months after publication, entered into force on 4 April 2022.

Law No. 69/2022 transposes the following:

- Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC, published in the Official Journal of the European Union (OJEU), L 130 of 17 May 2019 (“**EU Directive 2019/789**”); and
- Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, published in the Official Journal of the European Union (OJEU), Series L, No. 130 of 17 May 2019 (“**EU Directive 2019/790**”); EU Directive 2019/790 has sparked discontent among some large online platforms such as YouTube or Facebook for their added liability as regards potential copyright violations in the content published by their users publish.

Law No. 69/2022 establishes measures meant, *inter alia*, to improve licensing practices and ensure wider access to content, consisting in harmonised rules facilitating the

exploitation of works that are not commercialised, the extension of collective licensing agreements by collective management organisations (“CMOs”) to holders who have neither authorised nor excluded their works from this mechanism, the negotiation of agreements for the provision of works on video-on-demand platforms (VoD platforms) and the entry into the public domain of the reproduction of works of visual art at the end of the initial term of protection.

In addition, measures have been introduced to adapt exceptions and limitations to the digital and cross-border environment, including exceptions for text and data mining, the use of works in digital and cross-border teaching activities and the preservation of cultural heritage.

Law No. 69/2002 also introduces a number of measures aimed at ensuring a well-functioning market from a copyright perspective, such as measures relating to liability for the use of press publications and protected content by online content-sharing service providers, as well as providing a contract adjustment mechanism for the remuneration of authors and performers.

The amendments brought to Law No. 8/1996 seek to modernise the copyright legislation in view of the increasing use of digital and cross-border protected content.

The main amendments and supplementations brought to Law No. 8/1996 are as follows:

a) **Terminological amendments, new concepts and details on existing notions:**

Some of the new definitions introduced by Law No. 69/2022 are:

- An ***ancillary online service*** - an online service consisting of the provision to the public, by or under the control and responsibility of a radio or television broadcaster, of television or radio programmes simultaneously with their broadcast by the broadcaster or during a defined period of time after such broadcast, and of any material ancillary to such broadcast;
- ***Retransmission*** - any simultaneous, unaltered and unabridged retransmission, other than cable retransmission, for reception by the public of an initial transmission from any Member State of television or radio programmes intended for reception by the public, where such initial transmission is by wire or wireless means, including satellite, but not online. The notion becomes applicable pending two conditions being cumulatively met:
  - The retransmission is made by a party other than the broadcaster who made the original transmission or under whose control and responsibility the original transmission was made, regardless of how the rebroadcaster obtains the programme-carrying signals from the broadcaster for the purpose of retransmission; and

- Where made via an Internet access service, retransmission takes place in a managed environment.
- **Managed environment** - an environment in which an operator of a relay service provides a secure relay to authorised users;
- **Direct introduction** - a technical process whereby a broadcaster broadcasts its programme-carrying signals to a non-broadcaster so that the programme-carrying signals are not accessible to the public during that transmission;
- **Text and data mining** - any automated analytical technique aimed at analysing text and data in digital form to generate information such as, but not limited to, patterns, trends and correlations;
- **Press publication** - a collection consisting mainly of literary works of a journalistic nature, but which may include other works or other protected subject matter, meeting the following criteria:
  - Constitutes an individual item within a periodical or regularly updated publication under a single title, such as a newspaper or a general interest or specialist magazine;
  - Aims to provide the general public with information on news or other topics;
  - Is published in any form of media, print or online, at the initiative, under the editorial responsibility and under the supervision of a service provider organised in accordance with the law.

Periodicals that are published for scientific or academic purposes, such as scientific journals, are not deemed press publications for the purposes of the above.

- **Publisher of press publications** - a service provider on whose initiative, editorial responsibility and under whose supervision a press publication within the meaning of this Act is published in any form of print or online media;
- **Provider of an online content sharing service** - a provider of an information society service whose main purpose or one of its main purposes is to store and provide public access to a significant volume of copyrighted works or other protected subject matter uploaded by its users, which it organises and promotes directly or indirectly, for example, through the use of targeted promotional means, for profit. The following are not providers of online content sharing services in the sense of the above:
  - Non-profit online encyclopaedias;

- Non-profit educational or scientific archives;
  - Open source software development and sharing platforms;
  - Providers of electronic communications services;
  - Online marketplaces;
  - Enterprise cloud services or cloud services that allow users to upload content for their own use.
- ***Information society service*** - a service usually provided for a fee, at a distance (*i.e.* without the parties being simultaneously present), by electronic means (*i.e.* initially transmitted and received at the destination by means of electronic equipment for processing, including digital archiving and storage of data, and which is wholly transmitted, transferred and received by wire, by radio, by optical means or by other electromagnetic means) and at the individual request of the recipient of the service (*i.e.* provided by the transmission of data following an individual request).

b) **Changes to the object of copyright protection:**

- The new law includes in the category of works not eligible for copyright protection materials resulting from an act of reproduction of a work of visual art whose term of protection has expired, unless the material resulting from the act of reproduction is original in the sense that it is the author's own intellectual creation.
- A work or other protected subject matter shall be deemed non-commercial when it can be assumed in good faith that the whole of the work or protected subject matter is not available to the public through normal commercial channels, after a reasonable effort has been made to determine whether it is available to the public.

c) **Changes to the protections afforded under copyright:**

- The author's distinct and exclusive economic rights include the right to authorise or prohibit retransmission of the work;
- New provisions have been introduced on the application of the "*country of origin principle*":
  - For the purposes of applying the country of origin principle, acts of communication to the public and making available to the public of works or other protected subject matter, by wire or wireless means, in such a way that members of the public may access them at any place and at any time individually chosen, which take place in the case of the provision to the public of radio or television programmes (news and

current affairs programmes; own productions wholly financed by the broadcaster), where such acts of communication to the public or making available to the public are carried out within an ancillary online service by or under the control and responsibility of a broadcaster, and acts of reproduction of works or other subject matter necessary for the provision, access or use of that online service for the same programmes for the purpose of exercising copyright and related rights relevant to those acts, shall be deemed to take place only in the Member State in which the broadcaster has its principal place of business;

- The above provisions do not apply to broadcasts of sporting events, works and other protected subject matter included therein;
- In determining the remuneration for the rights to which the country of origin principle applies, the parties shall take into account all aspects of the ancillary online service, such as the characteristics of the service, including the duration of the online availability of the programmes provided within the service, the audience and the language versions provided; these criteria shall not preclude the calculation of remuneration on the basis of the broadcaster's revenues from the activity of the ancillary online service;
- The application of the country of origin principle is without prejudice to the contractual freedom of rightholders and broadcasters to conclude agreements, in accordance with European law, limiting the exploitation of those rights.
- As a novelty, the notion of broadcasting includes the transmission of a work or its representation not only by wire, cable, optical fibre or any other similar process, but also by direct introduction;
- The notion of cable retransmission has been replaced with the notion of cable retransmission, which (for the purposes of Law No. 69/2022) means the simultaneous, unaltered and unabridged retransmission by cable or by an ultra-short-wave broadcasting system for reception by the public of an initial transmission or retransmission taking place on national territory or, where applicable, of an initial transmission originating in another Member State, by wire or wireless means, including satellite, of television or radio programmes intended for reception by the public, irrespective of how the operator of a cable retransmission service obtains the programme-carrying signals from the broadcaster for the purpose of retransmission.

d) Amendments concerning the limits to the exercise of copyright:

Law No. 69/2022 introduces a number of new provisions on how reproductions/extractions of works can be made and on cases where the consent of the copyright holder is not required:

- Reproduction and extraction of text and data by research organisations and cultural heritage institutions for scientific research purposes from works or other protected subject matter to which they have legal access are permitted without the consent of the rightholders; copies of works or other protected subject matter made in this way shall be preserved with appropriate security measures and may be kept for scientific research purposes, including for the purpose of verifying the results of research; these provisions also apply to the *sui generis* rights of the makers of databases (*i.e.* the exclusive economic right to authorise and prohibit the extraction and/or re-utilisation of all or a substantial part of it, evaluated qualitatively or quantitatively);
- Rightholders may apply measures designed to ensure the security and integrity of networks and databases hosting works or other protected subject matter, without such measures exceeding what is necessary to achieve that objective;
- As an exception to the right of communication to the public and the right of making available to the public, as well as to the exclusive rights of software copyright holders and database producers, digital uses of works and other protected subject matter, including in the online and cross-border environment, are permitted to the extent justified by the non-commercial purpose pursued, the sole objective of educational illustration. Conditions:
  - Use under the responsibility of an educational institution, in its building or elsewhere, or in a secure electronic environment to which only pupils or students and teaching staff of the educational institution have access;
  - The use is accompanied by an indication of the source, including the name of the author, unless this proves impossible;
  - Use for non-commercial purposes;
  - Use does not replace or affect the purchase of materials for the educational market.
- Exempted from the reproduction right, as well as from the exclusive rights of the holders of copyright in computer programs and of manufacturers of databases, is the making of copies of works or protected subject matter in

the permanent collections of cultural heritage conservation institutions, in any format or on any type of medium, for the purpose of conservation and to the extent necessary for such conservation;

- Any contractual provision that does not comply with the exceptions set forth in this section d) above shall not be enforceable;
- The provisions set out in this section d) above shall apply only in special cases, provided that they do not conflict with the normal exploitation of the work or other subject matter and do not prejudice the author or the rightholders;
- Rightholders who have put in place technical protection measures are obliged to provide the beneficiaries of the above provisions with the means necessary for legal access to the works or any other protected subject matter; and may limit the number of copies made under the above provisions.
- Law No. 69/2022 also provides that reproductions and extractions from legally accessible works and other protected subject matter for the purpose of extracting text and data are permitted; they may be retained for as long as necessary for the extraction of text and data; this exception to the need to obtain the consent of rightholders applies provided that the use of the works and other protected subject matter has not been expressly reserved by the rightholders in an appropriate manner, such as machine-readable media in the case of content made publicly available online.

e) Amendments concerning the assignment of copyright:

- Under Law No. 69/2022, authors and performers granting non-exclusive licences or assigning exclusive rights for the exploitation of works or other protected subject matter are entitled to receive remuneration that is adequate and proportionate to the economic value of the licensed or assigned rights, taking into account the contribution to the work or other protected subject matter as a whole, or the actual exploitation thereof, as well as market practices (payment of a lump sum may constitute adequate and proportionate remuneration, unless otherwise provided by a contractual clause);
- The principle of freedom of contract and the principle of a fair balance between the rights and interests of the parties will apply, allowing authors and performers to authorise non-commercial or royalty-free uses of works or other subject matter under non-exclusive licences;
- These provisions do not apply to authors of a computer program;

- Authors and performers are entitled to receive information on the exploitation of their works and performances from their successors in title or from the parties to whom they have licensed or transferred their rights, according to the particularities of each sector; where these rights have subsequently been licensed, authors and performers or their representatives shall, on request, receive from subcontractors additional information if their first contractual partner does not have all the necessary information;
- In principle, this obligation of transparency does not apply where the contribution of the author or performer is not significant in relation to the work or performance as a whole;
- Also, this obligation does not apply to (i) contracts concluded by collecting societies or independent management entities; (ii) authors of a computer program;
- Disputes relating to the transparency obligation may be subject to mediation.
- As regards the amount of the remuneration for assignment of copyright, the new law maintains the rule that the remuneration due under a contract for the assignment of economic rights shall be determined by agreement between the parties, the amount being calculated either pro rata with the revenue from the use of the work or as a fixed sum or in any other way. Law No. 69/2022 introduces the right of the author to receive, through CMOs and in addition to the remuneration discussed above, the remuneration due from the actual use of the work, unless the assignment contract excludes such revenue; this new provision will enter into force on 1 May 2022.
- Previous provisions according to which, in the event of an obvious disproportion between the remuneration of the author of the work and the benefits of the person who obtained the assignment of the economic rights, the author may request the competent courts to revise the contract or to increase the remuneration as appropriate, have been repealed. However, the author may still apply to the competent court to establish the remuneration where none has been determined by contract.
- In the absence of collective agreements or collective employment contracts, authors and performers shall be entitled to appropriate and equitable additional remuneration from the party with whom they have concluded a contract for the exploitation of their rights or its legal successors, where the remuneration originally agreed upon is clearly disproportionately low in relation to all subsequent relevant net revenues



that are significantly higher than originally estimated, derived from the exploitation of the works or performances; these provisions do not apply in the case of contracts concluded with CMOs or independent collective entities or where the author or performer is remunerated proportionally to the net revenues generated from the use of his works or performances.

- Disputes relating to the contract adjustment mechanism set out above may be subject to mediation.
- Law No. 69/2022 introduces new rules on the revocation of a licence/transfer of copyright:
  - Where an author or performer has granted an exclusive licence or exclusively transferred his rights in respect of a work or other protected subject matter, the author or performer has the right to revoke the licence or transfer of rights in whole or in part in the event of non-exploitation of that work or other subject matter.
  - The revocation mechanism shall be applied taking into account: (i) the specific aspects of the music, audiovisual and publishing sectors and the different categories of works and performances; (ii) the relative importance of individual contributions and the legitimate rights and interests of all authors and performers affected by the application of the revocation mechanism by an individual author or performer, where a work or other subject matter contains the contribution of more than one author or performer.
  - Revocation may not be requested before the expiry of three years from the date of the conclusion of the contract for the licence or transfer of rights; in the case of works in daily and periodical publications, this dilatory period is of one year.
  - For the purposes of applying the above provisions, the author or performer shall first notify the person to whom the rights have been licensed or transferred and shall establish an appropriate period, always longer than one year, within which the licensed or transferred rights are to be exploited; after the expiry of this period, the author or performer may choose to terminate the exclusive character of the contract;
  - The above provisions do not apply: (i) where the non-exploitation of rights is caused primarily by circumstances which the author or performer is able to remedy; (ii) in the case of works or other protected subject matter which contain contributions by more than one author or performer; (iii) to authors of a computer program.

- Contractual clauses derogating from the above revocation mechanism are only permitted in collective bargaining agreements or contracts.
- Authors or performers have the option to terminate the exclusive nature of the contract instead of revoking the licence or transfer of rights, according to the above mechanism.

f) New provisions on the **property rights of publishers of press publications**:

- The category of recognised and protected holders of related rights in copyright also includes publishers, for their own press publications.
- **The publisher of a press publication has the exclusive proprietary right to authorise or prohibit the online use of its own press publications by information society service providers by way of:**
  - Direct or indirect, temporary or permanent reproduction, by any means and in any form, in whole or in part, and permanent or temporary storage on devices of any kind and in any form;
  - Making them available to the public by wire or wireless means, via the Internet, other computer networks or similar means, in such a way that they can be accessed, at any place and at any time individually chosen by the public.
- These rights expire two years after 1 January of the year following the date on which the press publication in question was published.
- The publisher's exclusive rights set out above **do not apply in the following cases:**
  - Private or non-commercial use of press publications by individual users;
  - Placing links to websites, as well as in the case of reporting simple facts in press publications;
  - The use of individual words or very short excerpts not exceeding 120 characters, from a press publication, provided that they do not affect the effectiveness of the publisher's exclusive rights set out above or lead to the press publication being replaced or to the public no longer having access to the press publication.
- The exclusive property rights of the publisher of a press publication cannot be invoked:
  - Against authors or other rightholders whose works or other protected subject matter are incorporated in a press publication, their rights remaining intact, so that they may exploit their works and other protected subject matter independently of the press publication in

which they are incorporated, subject to the law and the agreements between the parties;

- So as to prohibit use by other authorised users where the right to incorporate a work or other protected subject matter in a press publication has been granted under a non-exclusive licence;
  - In the case of the use of works or other protected subject matter whose protection has expired.
  - Authors of works embodied in a press publication are entitled to an appropriate share of the revenue that publishers of press publications receive from the use of their press publications by information society service providers, subject to the principles of freedom of contract and a fair balance of the rights and interests of the parties (a lump sum payment may constitute appropriate remuneration). These provisions do not apply to publishers of press publications for rights acquired in the context of employment relationships and rights in respect of which they have acquired ownership by inheritance or assignment or under individual agreements (they are entitled to at least a share of copyright income).
  - Where an author has transferred a right or granted a licence to a publisher of press publications, that transfer or licence shall constitute the legal basis for the publisher to be entitled to a share of the compensation for the use of works as an exception to the right which is the subject of the transfer or licence, or as a limitation of that right.
- g) **Other amendments concerning copyright related rights and sui-generis rights:**
- The exclusive economic rights of performers now include the right to authorise or prohibit retransmission of the determined performance;
  - The exclusive economic rights of producers of sound recordings now include the right to authorise or prohibit the retransmission of their sound recordings;
  - The exclusive economic rights of producers of audiovisual recordings now include the right to authorise or prohibit the retransmission of their own audiovisual recordings.
- h) **New rules applicable to online content sharing service providers (including platforms such as FACEBOOK, INSTAGRAM etc.):**
- An online content sharing service provider shall be deemed to be performing an act of communication to the public or an act of making available to the public when it grants public access to copyrighted works or other protected subject matter uploaded by its users.

- An online content sharing service provider must obtain an authorisation from authors, performers, producers of phonograms and videograms, as well as broadcasters and/or publishers of press publications to communicate works or other protected subject matter to the public or make them available to the public.
- Such an authorisation can be obtained, for example, by concluding a licensing contract.
- The authorisation also covers acts of communication to the public or making available to the public by users of online content sharing services where they are not acting in the course of a commercial activity or where their activity does not generate significant revenue in relation to the relevant acts covered by the authorisation granted to the online service provider.
- Importantly, **the exemption from liability provided by Law No. 365/2002 on electronic commerce** for information society service providers (*i.e.* Article 14(1)), which states that the provider is not liable for information stored at the request of a recipient if any of the following conditions are met: (i) the provider has no knowledge that the activity or information stored is unlawful and, as regards actions for damages, has no knowledge of facts or circumstances from which it appears that the activity or information in question could harm the rights of a third party; (ii) having knowledge that the activity or information in question is unlawful, or knowledge of facts or circumstances indicating that the activity or information in question might adversely affect the rights of a third party, the service provider acts expeditiously to remove or block access to it), **shall not apply where an online content sharing service provider performs an act of public disclosure or an act of making available to the public under the conditions set out in this section h).**
- Moreover, the liability mechanism under Article 14(1) of Law No. 365/2002 as mentioned above, as well as the one described below, do not apply to service providers who practice or facilitate piracy in the field of copyright and related rights.
- Providers of online content-sharing services are obligated to obtain the necessary authorisations and are liable for unauthorised acts of communication to the public, including the making available to the public of copyrighted works or other protected subject matter, if they have not obtained such authorisations.
- **By exception, suppliers are not liable if they demonstrate that they have cumulatively fulfilled the following:**

- They have done their best to obtain a permit;
- They have made, in accordance with high standards of professional diligence in the field, best efforts to ensure the unavailability of works and other specific protected subject matter in respect of which rightholders have provided relevant and necessary information to service providers;
- Have acted promptly and effectively, upon receipt of a sufficiently reasoned notification from rightholders, to block access to or remove the notified works or other protected subject matter from their websites, and have made their best efforts to prevent future uploads in accordance with the previous paragraph.
- In determining whether the service provider complies with its above obligations, the **principle of proportionality** shall apply and the following shall be taken into account:
  - The type, audience and size of the service and the category of works or other protected subject matter uploaded by users of the service;
  - Availability of adequate and efficient means and their costs for service providers.
- Law No. 69/2022 introduces more relaxed rules for providers who have made their services available to the public in the European Union for less than three years and who have an annual turnover of less than €10 million. Thus, the conditions under the liability regime are limited to cumulative compliance with the following:
  - They have done their best to obtain a permit;
  - They acted promptly and efficiently, upon receipt of a sufficiently substantiated notification, to block access to or remove works and other protected subject matter from their site;
  - They have made best efforts to prevent new uploads of notified works and other protected subject matter for which the rightholders have provided relevant and necessary information (this condition is only applicable if the average monthly number of unique visitors exceeded 5 million, calculated over the previous calendar year).
- Cooperation between online content sharing service providers and rightholders shall not result in preventing the availability of works or other protected subject matter uploaded by users which do not infringe copyright and related rights, including where such works or other protected subject matter are subject to an exception or limitation.

- Law No. 69/2002 also provides for exceptions to the above rule. Thus, users may freely post copyright protected content on online platforms in cases where:
  - Quotes, critiques, reviews;
  - Use for caricature, parody or pastiche purposes.
- Cooperation between online content sharing service providers and rights holders:
  - Must not lead to the prevention of the availability of works or other protected subject matter uploaded by users which do not infringe copyright and related rights, including where such works or other protected subject matter are subject to an exception or limitation (such as those mentioned above);
  - Should not lead to any general obligation of supervision.
- Providers of online content-sharing services must provide rightholders, upon their request and subject to compliance with trade secrecy legislation, with appropriate information on the functioning of the tools and technologies used by them in relation to the cooperation referred to above and, where licensing agreements are concluded between service providers and rightholders, information on the use of the content covered by the agreements.
- Providers of online content-sharing services are required to establish an **effective and timely dispute resolution mechanism** that is available to users of their services in the event of disputes concerning:
  - Blocking access to works or other protected subject matter uploaded by users;
  - Removal by online content sharing service providers of works or protected subject matter uploaded by users;
  - Blocking access to works or other protected subject matter uploaded by them or removed by the relevant providers.
- Complaints lodged under the above mechanism are processed without undue delay and the decision of the online content sharing service provider to block access or remove content uploaded by a user is subject to human review.
- The above-mentioned disputes may be settled by mediation or by court proceedings under the conditions of ordinary law.

- Where rightholders request the blocking of access to or removal of their works or other protected subject matter, **they must duly justify the grounds for their request.**
- Providers of online content sharing services are obliged to inform their users, by means of their terms and conditions, that they may use works and other subject matter protected under the exceptions or limitations on copyright and related rights provided for in this Act or European Union law.
- Law No. 69/2022 also establishes a number of new rules on the **use of works for non-commercial purposes**, including the following:
  - Depending on the mandates from rightholders, a CMO may conclude a non-exclusive licence for non-commercial purposes with a cultural heritage institution for the reproduction, distribution, communication to the public or making available to the public of works or other protected subject matter outside the commercial circuit that are present in the institution's permanent collection, even if not all rightholders concerned by the licence have mandated the CMO, provided that the following conditions are met: (i) based on its powers of attorney, the CMO represents the rightholders for the relevant category of works or other protected subject matter and of the rights covered by the licence; (ii) all rightholders are guaranteed equal treatment as regards the terms of the licence.
  - The right of communication to the public, the right of making available to the public, uses made to enable cultural heritage institutions to make available for non-commercial purposes works or other protected subject matter in their permanent collection that are not in the commercial circuit, are exempted from the reproduction right provided that: (i) the name of the author or other identifiable rightholder is indicated, unless this proves impossible; and (ii) such works or other subject matter are made available on non-commercial websites.
  - Rightholders have at any time the right to effectively exclude some or all of their works or other protected subject matter from the licensing mechanism set out above, including after the conclusion of a licence or after the beginning of the use of such works or other protected subject matter.
  - The above provisions do not apply to collections of non-commercial works or other protected subject matter where the evidence indicated they consist predominantly of:
    - Works or other protected subject matter, with the exception of cinematographic or audiovisual works published for the first time

or, in the absence of publication, broadcast for the first time in a third country;

- Cinematographic or audiovisual works whose producers have their headquarters or habitual residence in a third country;
- Works or other subject matter of rightholders who are nationals of third countries where, after taking into account any readily available evidence as to the availability of the works or other subject matter in question in the usual channels of trade, a Member State or third country could not be determined in accordance with the two points above.
- Websites presenting and promoting the activities of heritage conservation and presentation institutions are not deemed commercial sites, even where they sell tickets, subscriptions or memorabilia, if they belong to or concern the activities or services of the institution in question.
- Licences granted in accordance with the above allow the use of works or other protected subject matter outside the commercial circuit by cultural heritage institutions in any Member State of the European Union.
- Uses of works and other protected subject matter under the above exceptions shall be deemed to take place in the territory of the State in which the cultural heritage institution making such use is established.

i) **New rules on the rights of radio and television broadcasters:**

- The new law included among the exclusive economic rights of broadcasters the right to authorise or prohibit the retransmission of their broadcasts and programme services, with the obligation for the authorised party to mention the name of the broadcaster.
- Acts of retransmission of programmes by rightholders other than the broadcasters must be authorised by the holders of the exclusive right of communication to the public.
- Holders of copyright or related rights may exercise their right to grant or refuse authorisation for a retransmission only through a CMO. If a rightholder has not transferred the management of that right to a CMO, the CMO managing rights in the same category for which the retransmission service operator wishes to obtain retransmission rights shall be deemed to be entitled to grant or refuse retransmission authorisation for that rightholder.



- A rightholder has the same rights and obligations arising from an agreement between the operator of a retransmission service and a CMO as the rightholders who have empowered a CMO/CMOs to grant or refuse retransmission authorisation; those rights may be claimed within three years from the date of the retransmission which includes the work or other protected subject matter in question.
  - The above provisions shall not apply to retransmission rights exercised by a broadcaster in its own broadcasts, irrespective of whether those rights belong to it or have been transferred to it by other rightholders.
  - Where a broadcaster transmits its programme-carrying signals to a signal distributor by direct transmission without the broadcaster itself simultaneously transmitting those programme-carrying signals directly to the public and the signal distributor transmits those programme-carrying signals to the public, the broadcaster and the signal distributor shall be deemed to be participating in a single act of communication to the public for which they must obtain an authorisation from the rights-holders.
  - For direct introduction constituting a single act of communication to the public, as referred to above, authorisation must be obtained from the rightholders by the broadcaster for broadcasting and by the signal distributor for retransmission or cable retransmission, as appropriate.
- j) Amendments and new provisions on the management of copyright and related rights:
- Parties facing licensing difficulties when seeking to conclude an agreement to make audiovisual works available via video-on-demand services can now resort to mediation, carried out by one or more mediators chosen by the parties in such a way that their independence and impartiality cannot be called into question.
  - The resale right has been removed from the rights for which collective management is mandatory, becoming the object of optional collective management.
  - the new law expressly provides that the equitable remuneration to which performers and phonogram producers are entitled for the communication to the public and broadcasting of phonograms published for commercial purposes or reproductions thereof, as subject matter of collective management, must be a single remuneration.
  - New provisions on extended collective management have been introduced:
    - The following rights are subject to extended collective management:
      - the right of communication of musical works to the public;

- The right of public communication by satellite;
- The rights of reproduction, distribution, communication to the public or making available to the public of works or other protected subject matter outside the commercial circuit;
- The rights of reproduction and making available to the public of works belonging to publishers of press publications (the latter provisions will enter into force on 1 October 2022).
- Non-exclusive licensing authorisations granted by the representative collecting society shall also apply to rightholders who have not mandated or authorised that collecting society, subject to the following safeguards:
  - The CMO, on the basis of its powers of attorney, is the representative of the rightholders for the relevant category of works or other protected subject matter and the rights licensed for the territory of Romania;
  - Authors and rightholders who are members of the representative CMO, as well as non-members, enjoy equal treatment, in particular with regard to licensing conditions, access to licensing information and distribution of remuneration;
  - Authors and rightholders who have not authorised the representative CMO may exclude all or part of their protected works and subject matter from authorisation by notifying the CMO both before the licence is concluded and during its term;
  - Appropriate publicity measures are taken before works or other protected subject matter are used under the licence.
- Within 30 days of receipt of the notification referred to above, the CMO must inform users of the exclusion of such works and protected subject matter from its management portfolio, must issue new licenses from which to exclude such works and protected subject matter, and must update the ongoing licenses. The exclusion shall not affect the remuneration due to authors and rightholders for uses made under licences concluded by collective management bodies prior to the receipt of the notification.
- Publicity measures must be adequate and effective, without requiring CMOs to inform each individual rightholder.

- In cases where rightholders do not comply with the notification procedure or the CMOs do not comply with the publicity measures, the uses remain valid.
- CMOs are now also obligated to communicate to the public, through the media, the methodology/formula used to calculate the remuneration payable to authors or rightholders.
- CMOs are obligated to notify users of the termination of non-exclusive authorisations 30 days in advance.
- In the event of late or non-payment of remuneration, CMOs must notify users with a reasonable period of notice of the amount of the debt, deadline and manner of payment.
- Penalties for late payment or non-payment, as the case may be, shall be calculated exclusively by applying the legal interest.

k) **Transitional provisions:**

According to transitional provisions, the CMOs are obligated to update the existing non-exclusive authorisations within 90 days of the publication of Law No. 69/2022 in the Official Journal of Romania.

Following these recent amendments and supplementations, Law No. 8/1996 will be republished in the Official Journal of Romania, Part I, with articles renumbered.

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## Editors

The team of Țuca Zbârcea & Asociații specialising in **Intellectual Property** is composed of lawyers and industrial property attorneys with a rich experience in legal assistance and representation services provided to national and multinational companies for the protection of their intellectual property portfolio.

A significant component of our practice is assisting in the fight against product counterfeiting, product smuggling and illegal use of trademarks, especially consumer products such as cigarettes, beverages, food and clothing. The team also specialises in franchising, trademarks and patent protection in the pharmaceutical and software industries. Our intellectual property experts also regularly provide legal assistance in privatisation and private equity transactions, as well as complex commercial takeovers in insolvency proceedings.

Țuca Zbârcea & Asociații is a member of the main international bodies and associations in this field, such as INTA, WTO, ECTA.



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This information is for guidance only. It is not intended to provide definitive legal advice, which will be sought on a case-by-case basis. For details and clarifications on any of the topics covered in the Legislative Bulletin, please contact the above-mentioned lawyers.