

**October 2019**

***In focus: Law on Amendments and Supplements to the Law on Copyright and Related Rights***

On 18 September 2019, the National Assembly of RS adopted the Law on Amendments and Supplements to the Law on Copyright and Related Rights (hereinafter: the “**Amendments to the Law**”) which is in force from 26 September 26 2019, except for the provision stipulating the deadline (31 December of the current year) in which the organizations for collective administration of copyright and related rights are obliged to distribute and disburse the funds collected from users for compensation for the use of copyright and related rights in the previous year, effective 1 January 2020.

The novelties provided for by the Amendments to the Law aim to harmonize provisions of the national law with those of the relevant EU directives, establish a more efficient system of legal protection of copyright and related rights, and a more effective collective exercise of copyright and related rights.

The most important among these novelties are the following:

**1. Computer program**

Amendments to the Law specify that computer programs, together with supporting technical and user documentation, enjoy copyright protection.

It is explicitly stipulated that when the co-authored work is a computer program or database, the copyright of such computer program or database belongs to all co-authors, and that the author of the computer program created in employment has the right to a separate remuneration if stipulated by the agreement.

In order to ensure a minimum level of freedom for a person who lawfully acquired the use of a computer program, such person is now entitled to, without the author’s permission and without payment of royalties, unless otherwise provided in the agreement:

1. permanently or temporarily duplicate the computer program or parts thereof, by any means and in whatever form, when necessary to use the computer program for its intended purpose;
2. fixes errors in the computer program keeping in mind its purpose;
3. loads, displays, starts, transfers or places the computer program in the computer’s memory if it is necessary for duplication of the computer program referred to in item 1) of this paragraph;
4. translates, customizes, arranges and makes other changes to the computer program, as well as the duplicate results of those actions.

It is stipulated that the agreement may not prohibit the making of a backup of a

computer program on a permanent carrier if it is necessary for its use.

At the same time, the person who has the right to use a copy of the computer program is authorized to, without the permission of the holder of the right, observe, inspect or test the operation of the computer program in order to determine the ideas and principles upon which any element of the computer program rests, provided that he does so while undertaking the actions of downloading, displaying, running, transferring or storing the program for which it is authorized to do.

By the Amendments to the Law, it is permitted to, without the assent of the holder of the right, reproduce the source code and translate its form if such is necessary in order to obtain the data required to achieve the interoperability of the independently created computer program with other programs, provided that:

- 1) the said actions are taken by the licensee or other person entitled to use a copy of the program or by a person authorized by those persons to take such actions;
- 2) the data required to achieve interoperability was not otherwise available;
- 3) the actions are limited to the parts of the original program that are required to achieve interoperability.

The data obtained by decompiling may not be:

- 1) communicated to others, unless necessary to achieve the interoperability of an independently created computer program;

- 2) used to develop, produce or advertise a computer program that is substantially similar in expression to the computer program whose decompiling is performed or to any other infringing action on that program.

It is stipulated that the provisions of the agreement contrary to the legal provisions on decompiling are null and void.

## **2. Databases**

Amendments to the Law explicitly provide for databases to enjoy double protection: as copyrighted works and as objects of related rights. In the first case, the originality of the database is protected, and in the second, the investment invested in its creation.

## **3. Interpreter's rights**

Concerning the rights of the interpreter, a unique way is introduced to calculate the terms of protection of property rights in musical compositions with words, by providing that for musical compositions with words, the term of protection of property rights shall be calculated from the death of the last surviving author of the composition or text.

The right of the interpreter to just compensation is extended to cases of contractual transfer of the right to market his interpretation and the right to interactively make the interpretation available to the public, not only from leasing copies of his interpretation as was the case until these amendments.

Protection of the property rights of interpreters who recorded their interpretations on a phonogram has been extended from 50 to 70 years. Likewise, interpreters are now entitled to, after expiry of a period of 50 years from the date of lawful issuance of the phonogram, i.e. from the date of lawful publication of the phonogram, if the phonogram has not been issued:

- 1) terminate the transfer or assignment agreement concluded between the interpreter and the phonogram producer, unless the phonogram producer offers copies of the phonogram for sale in sufficient quantity to meet the needs of the public, or does not make the phonogram available to the public by wire or wireless means in such a way that to enable a person individual access from a place and at a time of his choosing;
- 2) receive an annual additional fee from the phonogram producer if they have transferred to the phonogram producer their exclusive property rights to the recorded interpretations for a one-time fee. The annual additional fee amounts to 20% of the revenue generated by the phonogram producer during the year preceding the year for which the annual additional fee is paid, namely from the revenue generated from the reproduction, market placement and availability to the public of the phonogram on which the interpretation is recorded;
- 3) change the contents of the agreement in favor of the interpreter if the

agreement between him and the phonogram producer concluded for the entire duration of the interpreter's protection of rights, stipulates that the interpreter shall transfer, i.e. assign to the phonogram producer exclusive property rights on the recorded interpretations in exchange for a fee due in installments.

Amendments to the Law provide that interpreters whose interpretations are recorded on a sound and image carrier (actors) will receive compensation from the broadcasting and re-broadcasting their interpretations.

#### **4. *Civil protection***

The Amendments to the Law broaden the circle of persons who can file a claim for infringement of copyright and related rights.

Changes have been made in terms of imposing provisional measures and measures of providing proof, as well as security in the interest of the opposing party. Amendments to the Law explicitly provide that provisional measures may be issued without the hearing of the defendant, especially when such delay could harm the prosecutor. Also, if the violation is done on a commercial basis, Amendments to the Law provide that the court may impose a provisional measure of seizure of movable and immovable property, as well as a measure of prohibition of payment of funds from the account of the person against whom the provisional measure is proposed, if the

author, i.e. interpreter makes it probable that the copyright or related right has been infringed or that it will be infringed, and that there are circumstances which may jeopardize the compensation to the holder of the right.

It is stipulate that a court that conducts a lawsuit for copyright infringement may request information about copyright infringement and related rights not only from the person who committed the infringement, but also from third parties to whom that person is related in a business sense, such as the person who owns the goods that infringes the copyright or related right, or the person providing the services that infringe those rights.

#### **5. Other changes**

Amendments to the Law introduce significant innovations regarding the collective management of copyright and related rights, and supplement the provisions of the Law relating to the exclusive right of broadcasting, re-broadcasting, interactive making of a work available to the public, the right of a servant, legal protection of database producers.

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