

Current State and Challenges of Copyright System in Armenia

Dear colleagues, dear guests, dear participants

At first a small information on Copyright law in Armenia.

The first instrument in Armenia protecting authors' rights and providing royalties for the use of their works was the "Statute of Author's Rights", adopted in 1930 by the Central Committee of the Soviet Armenia. The system of collective administration exists in Armenia since 1933, when was established Armenian branch of Trans-Caucasian Committee of Dramatic Writers and Composers. The main task of this branch was the collection of author's remuneration for public performance of their works and their rights protection. The branch was well-known among the elder creative generation.

Today the legislative field of the copyright and related rights is harmonized with the main standards and provisions of the international conventions and treaties, directives of European Union (EU). Armenia is a member of United Nations organization since 1992, World Intellectual Property Organization since 1993, the Eurasian Patent Office since 1995, and World Trade Organization since 2003. The legislative field of the copyright and related rights is regulated by local laws:

- Constitution of RA, Art.31**
- Civil Code of RA, section 10**

- **Criminal Code of RA (art. 158)**
- **Customs Code of RA, section 14**
- **Copyright and Related Rights Law of RA,**
- **The Decree of the Government of RA on 11.01.2007 N 506-N referring to minimum rates of the authors' remuneration for the certain types of use of the works: public performance of musical and theatrical works, broadcasting of the works on TV, Radio and Cable, reproduction of works by audio-video recordings, their rental, on-line use of the copy of audio-video recordings or audiovisual works.**

The laws are periodically reviewed, amended and harmonized with the main provisions of the international conventions and agreements of Armenia and EU directives, as the works of Armenian creators are also performed, broadcasted, produced and distributed outside Armenia. Armenia has ratified Berne Convention for the Protection of Literary and Artistic Works, Rome Convention for protection of performers, phonogram producers and broadcasting organizations, Geneva Phonogram Convention, WIPO Internet treaties, TRIPS.

As we know copyright does not depend on official registration or formalities, it originates by the mere fact of creation of the work and covers creations in the sphere of literature, science and art. The work is an original product of intellectual creation and expression of the author's feelings, thoughts, a mirror of his inner world and from this point of view it becomes the creator's ownership. Works may be created individually or jointly. The author has exclusive right to use his work in any manner he wants or give permission to the third persons to use his work. The use of

the work in large scale by public is a way of appreciation of the author's work, expression of respect and recognition of his rights.

I have to mention that not all the right holders are informed about their rights foreseen by the law or have sufficient finance means to protect their rights in case of infringements. The situation is complicated having in mind that copyright does not require official registration and is recognized by the mere fact of the creation of the work. The author is deemed to be the person whose name is mentioned on the work.

As we know Law on Copyright and Related rights (hereinafter Law) covers works in domain of literature, science and art, as well as the computer programs. Protection of computer programs as literary works under the Berne Convention is provided by Article 10.1 of TRIPS, which confirms that those provisions of the Berne Convention that apply to literary works shall be applied also to computer programs. Translations, other derivative works like arrangements, adaptations and other transformations are independent works and shall enjoy protection equal to the originals. The translator or the author of other derivative work shall enjoy copyright without prejudice to the rights of the author of the translated or otherwise transformed work: it means for translation or transformation of the work the consent of the author must be obtained beforehand, otherwise they will be considered as infringers of copyright and bear liability.

Collections of work, databases and other composite works, which by the reason of the selection and (or) arrangement of their contents are results of a creative work, are also covered by the Law.

Subject matter of copyright protection are also works created on employment assignments or employment duties. The economic rights of such works shall belong to the employer unless otherwise stipulated by the contract between the author and the employer.

Works are expressed in spoken, written or any other objectively perceivable manner. Of course ideas, scientific discoveries, methods, principals, official documents, state emblems and signs, traditional folklore, daily news, political speeches and so on are not covered by copyright.

The Law grants to author;

-exclusive moral rights to be recognized as the author of the work; to use the work by his name, pseudonym or anonymously, prohibit modifications which may prejudice his honor, to make the work public for the first time, to withdraw the decision to make the work public.

- exclusive economic rights to give permission on the use of his work or prohibit the use of it. The use of the work means its reproduction, distribution, translation, transformation, public performance, broadcasting and rebroadcasting, rental, communication to the public by computer or other networks and so on.

The Law provides protection also for performers, for the producers of the first fixation of the film or phonogram, for broadcasting organizations, for publishers and database makers, who are owners of related rights, which run 50 years from the fixation or first publication. Exception is data base maker's rights, which is 15 years from the date of completion of the making of the database or from the date it is made available to the public.

The main provisions of the Law are also applicable to the publishing sphere. As I said, the publisher himself is a holder of exclusive related rights to the typographical arrangements of his publication; he has the right to authorize or prohibit third persons the reproduction of the typographical arrangements of his editions. The publisher may also grant third persons the right to use his typographical arrangement by contract. The contract shall include the term of use, the amount of remuneration and the payment order, the territory and etc. Publisher's exclusive right to the

typographical arrangement is included in the Law as a result of many discussions with Publishers National Association of Armenia.

Provisions also are set in the Law for the previously unpublished works, which, after the expiry of economic rights of the author, are lawfully published for the first time by any person. This person benefits rights equivalent to the economic rights of the author for 25 years. The same is for critical or scientific edition of a work, which has come into the public domain. In this case the person, who prepares the edition, benefits the rights for 30 years.

Of course the Law has foreseen limitations of authors rights for libraries, educational and cultural establishments, when without the consent of the author and without payment, but with the obligatory mention of the author's name and primary source of the work, quotations or extracts of the lawfully published works may be used for scientific, research, critical, informational and other purposes to the extent justified by the purpose of quotations. In other words only extracts or quotations, not the whole book may be used on non commercial purposes, because the expression " to the extent justified by the purpose " does not clearly show the size of the used material.

For the use of the work the prior permission of the author is required. It is obligatory. How can you obtain the permission of the author;

- at first you need to clarify if the 70-years term of protection of the authors rights is not expired, because upon expiration of that term the work shall fall into the public domain and any person can freely use the works in public domain without the author's remuneration and permission;

- having in mind the character of the work you have to check, if the author is a member of a collecting society. The role of these organizations is very

significant; they can provide author's contact details, the country where he lives, the society he is member of. The creative unions also may be of great help as well.

After clarifications a written contract is concluded with the author, which may be exclusive or non exclusive. The contract shall be compensative. By non-exclusive contract the right holder grants the licensee a right to use the work in certain term and within the limits mentioned in the contract, retaining the right to authorize third persons to use the work.

By exclusive contract the right holder transfers only to the licensee an exclusive right to use the work in certain term and within the limits provided by the contract. The author's contract shall establish the extent of the transferred rights, the modes and term of the use of the work, territory, the amount of remuneration. It is important to mention the territory in the contract, because copies of the work in other countries are realized on higher price and it is necessary to take into consideration the market characteristics. In case of absence of the territorial condition where the work will be used, the territory is limited to the territory of Armenia.

If the term of the contract is not mentioned, then the validity period shall be considered 5 years.

The contract shall cease at the moment of expiry of the term of validity of economic rights.

Each party of the contract may transfer the rights transferred under the author's contract to third persons only in case it is directly stipulated by the contract. Conditions contradicting with the provisions of Law, shall be null and void.

The parties shall be responsible for fulfilling terms of the contract and compensate the caused damage.

Law sets the duration of economic rights for the whole life of the author and for 70 years after his death. The economic rights in a work created by co-authorship shall run for the life of the co-authors and 70 years after the death of the last surviving author. The same period is foreseen for the protection of audiovisual works (AV); the authors of AV works are the principal director, the author of the screenplay, the author of the dialogue, the composer of music specifically created for the audiovisual work and the cameraman. They are deemed to be co-authors though they are not co-authors. The term of protection of audiovisual works shall expire 70 years after the death of the last surviving author.

In case of publication the work anonymously or by pseudonym the publisher is deemed to be the representative of the author and is entitled to protect author's rights.

If a work is published in parts and the term of protection of economic rights runs from the time when the work was lawfully made available to the public, the term of protection of economic rights shall be calculated for each such item separately.

Upon expiration of the term of protection of economic rights, the work shall fall into the public domain. Any person can freely use the works in public domain without the author's remuneration, however, protecting the right of authorship, the right of name and the right of honor and reputation of the author.

Moral rights are nontransferable, are not limited in time except the right of withdrawal, which runs for the life of the author.

Law sets the actions considered to be infringements of copyright, such as;

- any use of a work or its essential part if for such use author's permission is not obtained beforehand.

- a person who does not implement the requirements of this Law shall be considered as an infringer of copyright or related rights.

- copies of protected subject matters made or distributed without the consent of the right holder shall be considered false or counterfeited.

- compilation of extracts, ideas from other works without mentioning of the source or submission of the whole work by his name shall be considered to be plagiarism.

In everyday life we meet copyright infringements very often; great progress is seen in the domain of illegal softwares. Here the representative of Business Software Alliance closely cooperates with the police department and we see effective results of their work. Infringements are very many in the field of phonograms, but on my opinion the situation will be regulated very soon and the results will be effective also, as the new law on compulsory labeling of any kind of electronic carriers with control marks entered into force in October and will prevent the circulation of unauthorized copies in the music market.

Of course there are also many infringements in publishing industry, like reprographic reproduction of the book without rightholders permission and payment, reprinting of the book by a publisher other than the original publisher without authorization (dictionaries, textbooks, teaching manuals), publication of the translation without mentioning translators name, permission and payment and so on.

In case of infringements the right holder of copyright or related rights may seek protection of his rights by applying to the court. If he is a member of collecting society, then the society may realize the protection of his rights.

The rightholder may claim from the infringer

- **recognition of his rights;**
- **recovery of the situation existing before the infringement;**
- **seizure or destruction of counterfeited copies, as well as the materials and equipment used for their production;**
- **compensation of damage (including the lost benefit) in the order established by law;**
- **compensation at the rate of double royalty or remuneration, which the right holder would receive if the infringer had the authorization for the use of copyright subject matter;**
- **publication of a judgment in exercising mass media at the infringer's expense.**

The right holder may choose one of the remedies mentioned. The persons, who are connected with the infringement and fail to give the required information or documents, are liable for damages that may be caused by their failure to comply. Counterfeited copies not demanded by the right holder, as well as the materials and equipment used for their production and reproduction may be destroyed according to the court decision.

In case of copyright or related rights infringements in significant volume or on a large scale the newly edited article 158 of criminal Code is applied, which foresees hard penalties. It sets that Illegal use of the object of copyright and related rights or appropriation of authorship, as well as recording of a work on any type of electronic carrier without rightholder's consent, if the action is conducted in significant volume, shall be punished with penalty of 5 hundred thousand to 1.000.000 drams or imprisonment for the period of one year; if the action is conducted on a large scale, shall

be punished with penalty of 1 million up to 2.000.000 drams or imprisonment for the period of two years.

The action is considered to be conducted in a significant volume, when the total value (the price) for the license of using the object of copyright or related rights is 50.000-200.000 dram.

The action is considered to be conducted on a large scale, when the total value (the price) for the license of using the object of copyright or related rights exceeds 200.000 drams.

If the rightholder has the ground to think, that infringing copies of his work can be transported through the Customs boarder of Armenia, he may submit an application and prevent the registration of intellectual property object and its release. But the Customs Code states, that if it turns out, that rightholder's rights have not been infringed, the responsibility for all possible costs and damages of the transporter has to bear the rightholder. Customs body bears no responsibility and this is the main reason, that the rightsholder prefers not to declare about his rights infringements, if such exist.

Today the digital technology enables the transmission and use of the protected material in digital form over interactive networks. Digitization makes possible to transmit, copy, store the protected works via Internet in perfect quality. Internet is an excellent mean of disseminating works in unlimited number of copies to locations around the world in a minute. A touch on the mouse is sufficient for your work to travel all over the world. Though copyright has territorial character, Internet is free of territorial borders and serves as fruitful ground for rights infringements, especially

for books, articles, digital libraries, musical and audiovisual works. Today the majority of the protected material in websites is without authorization. The possible free downloads and secondary unauthorized commercial use result in high percentage of piracy. In such cases the rights holder may protect his works in digital environment by the use of protection technology which prohibits unauthorized copying of their works. The removal or alteration of electronic rights management information, attached to the work and object of related rights, which identifies its creators, performer or owner, the terms and conditions of its use also is a matter of liability. For providing circumvention of technological measures or removal rights management information attached on the work, the Law states, that those persons shall bear liability equal to that established for the infringement of copyright and related rights.

Since February of the current year in Armenia Twinning program started and will last two years. The program is aimed to harmonize Intellectual Property laws to EU legislation to have a developed intellectual property rights protection system. Enforcement bodies are included in the program; the Police, the Customs, Courts and judicial bodies, private sector. Trainings, various seminars and workshops, exchange of practical experience are organized for the staffs of enforcement bodies. Bills of amendments in Civil, Administrative and Criminal Codes are developing. It is expected to foresee *ex-officio* rights (TRIPS) for police and customs bodies, as well as include provisions of EU Enforcement Directive in drafts.

In the framework of Twinning program the work to create information data base has began. Visiting the internet site of IP agency you can see section Juridical Acts, where various judicial acts referring to IP

rights are included. Since the beginning of this year registration of the IPR objects in Customs registry is done.

At present the new bill on copyright and related rights is in the process of development by an EU independent expert. The bill foresees to clarify the satellite broadcast and cable retransmission rights, enlarge the limitations on authors' rights and exceptions for libraries, educational and culture entities like exception referring to translations of works by person giving or receiving instructions provided this is not done for commercial purposes. Such translations may be used for private educational, teaching and research purposes only: it is expected to foresee provisions for people with sight and reading problems and change the work format for them, regulate the use of orphan works; these are works, whose authors are unknown or cannot be reached. Prolong the term of protection of songs written jointly by a composer and lyricist up to 70 years after the death of the last author considering them to be co-authors, prolong the term of economic rights of performers and phonogram producers up to 70 years after fixation (by EU Directive 2011/77/EU amending 2006/116/EC directive on the term of protection of copyright and certain related rights), strengthen the provisions on rights enforcement, clarify and enlarge the activities of collective organizations, establish control on the activity of such organizations by accreditation.

Supervision and enforcement in IPR area is implemented by the Police, particularly by the Division of Struggle against organized Crimes; approximately 11 cases of copyright infringements were examined this year and the problem is solved mainly by concluding peace contracts. To fight Counterfeiting and Piracy in Armenia the Prime Minister of the RA

in 2009 has created a high level Armenian Observatory on Counterfeiting and Piracy with participants from public and private sector. The Observatory is chaired by the Minister of Economy. They analyze the practical problems, submit them to the attention of the government and try to find ways for their solution.

The main task of the Law is the protection of interests of rightholders. There are much problems to be regulated in this field. The lack of IP specialists and low level of IP awareness of the users and the public in general has its negative impact on the fluent process of intellectual property protection. The situation is adequately to think over in the juridical bodies, especially in courts. Raise of copyright awareness level of the public, clarification of the main provisions of the law, illustration of the copyright law among businessmen, trainings of juridical bodies, attorneys and lawyers is very significant. From this point of view the efforts of the Intellectual property agency and Twinning program will be of enormous support. As I have already mentioned many seminars, speeches, trainings and discussions are held by the administration of IP agency.

Though the legislative field and juridical bases in Armenia are in accordance with the required international standards and Armenia has accessed to the main conventions in the intellectual property sphere, there is much to do to prevent piracy and counterfeiting in this field. As I said, even perfect laws do not act automatically. On my opinion the main problem related to IPR protection in Armenia is the lack of severe enforcement provisions to prevent piracy and counterfeiting. That's why it is very significant to provide in time modifications of the legislative field side by side with the science and technical development, carry out consultative work and clarifications of law directed to the raise of public

awareness, and particularly for small and medium-sized enterprises' representatives and entities, whose activity is closely connected with the use of IP subject matters, generate the good will of users to recognize and respect the rights of creators and pay remuneration due to them.

It is very important to have qualified specialists and for this purpose provide their participation in a great variety of seminars and trainings on IP matters, exchange of experience by study tours.

Though Berne Convention does not require official registration of copyright, but the practice has already proved, that the authors and the users do need registration of copyright and their works to avoid further difficulties in courts. Article 8 of the Law on Copyright and Related Rights foresees possibility to deposit or register works in the authorized body or confirmation in notary. Though the law provides, that in case right holders wish so, they can deposit their works or the subject matter of related rights in the collective organization and receive relevant document on deposit, but it is not a sufficient solution, as the status NGO of collective organization basically in most cases is not accepted by courts. Establishment of a registry will provide a great help to the right holders to prove easily their rights over the IP subject matters in the court.

It is in great request to provide the universities and other educational institutions with literature, teaching materials and manuals on intellectual property especially in Armenian. Since 2010 IP agency realized the translation and customization in accordance of Armenian IP legislation of WIPO publications from the series "IP for business" ("Creative Expression", "Inventing the future", "Making a Mark", "Looking Good", "Stitch in Time", "Secrets of IP- a Guide for exporters") and other books on general information on IP. All these publications are aimed to raise

awareness and knowledge on IP laws of the small and medium-sized enterprises (SMEs). The translated publications are distributed among students of law departments, public libraries, libraries of the universities and institutes, business companies, users of IP subject matters, attorneys, lawyers.

The electronic versions of the publications can be freely downloaded from the agency's web site: www.aipa.am/publications. I hope these complex measures will support more effective protection of Intellectual Property Rights in Armenia.

Thank you

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