

Boundaries and Interfaces

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1. The subject matter of protection – Works

Answers to Questions 1.1- 1.3

by Anna Despotidou, Lecturer in Law, Aristotle University of Thessalonica

1.1 How do your legislators or caselaw define a literary work? In particular, how is speech protected? Is ex tempore speech a literary work and what are the conditions for protection?

a) In Greek copyright system the definition of “work” is to be found in Article 2 of Law 2121/1993, that refers to the protected subject matter *in general*. More specifically, according to § 1 of the afore-mentioned provision “The term “work” shall designate any original intellectual literary, artistic or scientific creation, expressed in any form, *notably* written or oral texts, musical compositions with or without words, theatrical works accompanied or unaccompanied by music, choreographies and pantomimes, audiovisual works, works of fine art, including drawings, works of painting and sculpture, engravings and lithographs, works of architecture and photographs, works of applied art, illustrations, maps and three-dimensional works relative to geography, topography, architecture or science”

This broad definition of the notion of “work”, that has been chosen by the Greek legislator, brings us to the conclusion that -amongst others- any *literary creation*, which is: a) the product of an intellectual procedure, b) is marked by originality and c) is expressed in any form perceived by the human senses, can be protected as “work” under Greek copyright law. In other words, literary

creations, that fulfil the above presuppositions, fall into the *first general category of works*, that is indicatively referred to in Art. 2 § 1.

However, one sole work could, at the same time, fall into more than one categories of works, i.e. a scientific article could be designated both as a literary (written text) *and* a scientific work (original expression of scientific ideas and opinions on a certain topic). Furthermore, the reference to *written and oral texts* in the beginning of the illustrative list of protected works does not define the term “literary works”, but solely explains that this refers to both written and oral texts. In addition, according to § 3 of the same Art. 2 “...computer programs and their preparatory design material *shall be deemed to be literary works* within the meaning of the provisions on copyright protection...”. In this context, the *object code*, as well as the *source code*, of a computer program are protected.

Thus, we conclude that the Greek legislator did not aim to and *does not*, finally, *define* the notion of “literary work”, probably for greater flexibility. On the other hand, the significant amount of cases which deal with various types of literary works (i.e. novels, poems, short-stories, compilations of fairy-tales, original screenplays, text-books, legal documents, extended manuals, scientific books or publications, dictionaries, encyclopaedias, newspapers’ articles, editorials, personal diaries, interviews, etc.) do not provide us with any definition of the above term.

They rather seem to take it as granted that any *literary work*, either written or oral, long or short, sophisticated or simple, shall be protected by copyright law, if it is the original intellectual creation of a person (or persons) and is expressed in a form that can be perceived by the human senses and, more precisely, by sight or hearing (*fixation in tangible form*).

This means that the term “literary work” has been interpreted by the Greek courts to connote *no criterion of literary merit or qualitative value*. Such a conclusion is primarily justified by § 4 of Art. 2 (L. 2121/1993) according to

which “The protection afforded under this law shall apply regardless of the value of the work and its destination...”. Furthermore, Courts pay no attention as to whether the literary work under question is handwritten or typed or has been produced or/and stored in a digital form.

For the completion of the analysis, we would like to note that in contrast to the Greek legislator and Courts, copyright theorists have tried to define the term “literary work”, using broad and *mainly non-legal language*. According to the definition that is generally accepted, any creation, the content and/or meaning of which is expressed (and being perceived) by means of a language, written or orally, is regarded as a “literary work” [*Marinos M.*, Copyright Law 2004 (2nd Ed.), p. 84]. The language that is used could be modern, old or even artificial (i.e. Pascal, Cobol, Fortran, etc.), while the exact content or the material form of the work has no legal influence. As long as oral texts are concerned, the same opinion states that they are expressed through the oral speech and their medium of expression (“*corpus mechanicum*”) is the voice (*Marinos M.*, op. cit., p. 85).

From all the above, it becomes apparent that in the context of Greek copyright system *speech is protected as a literary work (“oral text”), if it is original*. More specifically, according to the leading academic opinion expressed on this issue [*Marinos M.*, op. cit., p. 86, *L. Kotsiris/E. Stamatoudi* (Ed.), The Law for the protection of Copyright 2009, Art. 2, n. 52/*Stamatoudi*], not only prepared but also *ex tempore* speech (i.e. university or school lectures, business presentations, interviews, preaches and sermons, comments, etc.) is regarded to be an “oral text” and thus it is protected as a literary work, if the condition of originality is met.

As will be thoroughly explained below (under question 1.4.), crucial criterion for the recognition of originality is the estimation that, under similar circumstances and with similar goals, no other creator could possibly create the same work. In other words, the work should present an “individual particularity” or a

minimum level of “creative level”, which defines and differentiates it from routine tasks or other similar works, already existent (Areopag 152/2005, Court of Appeal of Athens 80/2008, Court of First Instance of Athens, 5144/2009).

As far as speeches are concerned, this *individuality* can be retrieved from various elements of the particular work/speech, such as its theme, content, conception, structure and articulation of ideas, personal form of expression and/or style, etc. Therefore, live reportages or oral interviews, in the context of which the journalist simply reports events and data or poses obvious questions, without being involved in any personal comments or research or further elaboration of the text, do not meet the condition of originality and cannot be protected as works in the meaning of Art. 2 § 1 of L. 2121/1993 (*Marinos M.*, op. cit., p. 86). It should be reported, however, that from the judicial decisions that are known to us only one (Court of First Instance of Athens 7448/1985), which has been decided under the previous legal status (L. 2387/1920), refers to the protection of speech and concludes, that an oral interview is protected as a literary work, created by the person that is being interviewed.

1.2 For short works – headlines, phrases (including slogans), book titles, for example; are these covered by statute? Does case-law provide guidance on protection? Is this issue dealt with de minimis rules? (In the EU discuss Infopaq and how the case is accommodated in national law].

As it has already been mentioned, the enumeration of copyright protected works and groups of works in Art. 2 § 1 of L. 2121/1993 is indicative and not exhaustive. In addition, according to § 4 of the same article, “the protection afforded under copyright law shall apply regardless of the value of the work and its destination and regardless of the fact that the work is possibly protected under other provisions”. Therefore, any human creation that meets the conditions stated in the afore-mentioned § 1 -and in particular that of originality- can be protected as “work”, no matter whether it falls into any of the explicitly referred types or groups of works, or not.

Therefore, *although* the Greek legislator does not particularly refer to “short works” or, for example, to “book or newspaper titles”, and *since* he does not explicitly exclude them from the protection of copyright law, we conclude that works such as titles, headlines, phrases, slogans, etc, that are short in length, are covered by statute. In other words, they can be protected under L. 2121/1993 if they meet the necessary standards, regardless of the fact that they are possibly protected under other provisions (i.e. under unfair competition or trademark law; *Koumantos G.*, Copyright Law 2002 (8th Ed.), p. 147-149; *Marinos M.*, op. cit., p. 106-107). In this context, we would like to mention that titles of newspapers and magazines could be deposited, and thus protected, as trademarks, according to Art. 2 § 1 of L. 2239/1994.

The case-law on the issue here examined is limited but rather interesting. Greek courts provide copyright protection to short works, and in particular to book or newspaper or movie titles (Court of First Instance of Athens 3982/1986, 16400/1988, 7147/2000, Court of First Instance of Thessaloniki 3412/1985) and to short phrases, used for advertising purposes (Court of First Instance of Athens 7018/2008), *if they are proved to be original*. In the majority of cases, the originality is sought in the title or the phrase itself and in particular in the choice, sequence and combination of the words employed.

Common words or combinations of (a few) words, that are usually employed to define works of similar type or content, do not qualify for protection (Court of First Instance of Athens 8753/1995, Court of Appeals of Athens 3252/2002); the originality of a particular part of a work, such as the title, should be judged on the same criteria as the originality of the work as a whole (Court of First Instance of Thessaloniki 3412/1985).

As a consequence, the fact, that a novel is original and thus protected as a “literary work” in the meaning of Art. 2 § 1 of L. 2121/1993, does not necessarily mean that its title is also original and should be protected under copyright law. In other words, *the protection of the title is autonomous*.

However, according to another opinion, that is also maintained in jurisprudence, but not in theory, the originality of a title, which apparently constitutes a part of the work it defines/ specifies, *depends on the originality of the work as a whole* (Court of First Instance of Athens 4526/1988).

Otherwise, titles of original works should be protected, provided they share the originality of the work they define, in the sense that they reflect the meaning of this particular work and/or summarize its content. Furthermore, there seems to be an agreement that, although the condition of originality is very difficult to be met and *is rarely met* in single words or short phrases (i.e. titles or slogans), their copyright protection should not be excluded. Short works, like any other work, are protected under copyright law, provided they are original.

From all the above, we conclude that the Greek courts do not seem to adopt the opinion that the matter here examined should be dealt with *de minimis rules*. In other words, the concept that the protection of a (literary) work is depended on its length does not prevail. On the contrary, according to the leading academic opinion expressed on this issue, “The originality of a work bears no relationship with its size. Even a particularly small piece of work may be deemed worthy of protection, as copyright law does not provide for a minimum size limit” (*Koumantos G.*, op. cit., p. 148, *L. Kotsiris/E. Stamatoudi* (Ed.), op. cit., art. 2, n. 33/*Stamatoudi*).

As to the Infopaq case (C- 5/08), we would like to mention the following: this case refers to the concept of “reproduction in part” and attempts to answer whether the act of storing an extract of a protected work (a newspaper article), comprising 11 words, and printing out that extract, which occurs during a data capture process, fulfils the condition of being transient in nature, as required by Art. 5 (1) of the Directive 2001/29 and, therefore, this act can be carried out without the consent of the relevant rightholders.

The case is clearly connected with the protection of short works, that is examined here, since the Fourth Chamber had to cope initially with the matter,

whether the short extracts that were being reproduced, i.e. the phrases or the parts of phrases of the relevant newspaper articles, constituted copyright protected “works”. According to the Court, the various parts of a work *should not be treated differently from the work as a whole*. In other words, the above-mentioned newspapers’ extracts enjoy protection, provided they are original. It should be noted, however, that the level of originality used by the Court of the European Union was that of the Directives 91/250, 96/6 and 2006/116.

As a consequence, it was stated that the parts under question were protected under Art. 2 (a) of Directive 2001/29 provided they contain elements, “ which are the expression of the intellectual creation of the author of the work”. In the context of Greek copyright law this standard of originality applies only to computer programs, databases and photographs and not to literary works, such as newspaper articles.

Thus, the Infopaq judgment can be followed by the Greek courts, *provided* they apply the standard of originality that is demanded -according to L. 2121/1993- for the protection of literary works (see supra, under question 1.1). Furthermore, the Infopaq sets a number of criteria for judging the creativity of literary works, in particular newspaper articles (recital 44-45), and declares that words, considered in isolation, do not constitute elements covered by the copyright protection (recital 46).

Moreover, it seems to share the opinion that parts of works are protected by copyright, since, as such, they share the originality of the whole work (recital 38). In any case, according to the Court, it is up to the (national) judge to determine, whether certain isolated sentences, or even certain parts of sentences, may be suitable for conveying to the reader the originality of a publication such as a newspaper article and thus liable to come within the scope of the protection of copyright law (recital 47).

1.3 How does your legislation define an artistic work? A closed and defined list of works? Open – ended definitions for greater flexibility?

Greek legislation does not define the term “artistic work”. Instead, Art. 2 § 1 of L. 2121/1993 provides that “the (general) term “work” shall designate any original intellectual literary, *artistic* or scientific creation, expressed in any form, *notably* written or oral texts, musical compositions with or without words, theatrical works accompanied or unaccompanied by music, choreographies and pantomimes, audiovisual works, works of fine art, including drawings, works of painting and sculpture, engravings and lithographs, works of architecture and photographs, works of applied art, illustrations, maps and three-dimensional works relative to geography, topography, architecture or science”.

The broad wording chosen by the Greek legislator allows us to conclude that, any artistic creation, which a) is the product of an intellectual procedure, b) is marked by originality, in the meaning stated above (under question 1.1) and c) is expressed in any form perceived by the human senses, can be protected as “work” under Greek copyright law.

Furthermore, the indicative list of works, that follows, contains various types of works, which apparently fall into the so – called “artistic domain”. It is common ground, that musical compositions, choreographies and pantomimes, audiovisual works, works of fine arts (paintings, sculptures, engravings and lithographs), photographs, etc., are, generally speaking, works of art. All these artistic creations, however, as well as others, that could be added to the illustrative list of Art. 2 § 1 (i.e. surveillance art, installations, performance art, etc.), may be deemed worthy of protection under copyright law, *only if they meet the conditions mentioned above*. In other words, not every piece of art is deemed to be an “artistic work” within the meaning of L. 2121/1993. Moreover, according to the leading academic opinion on this issue, the copyright protection of an artistic creation *does not (and should not) depend on any special aesthetic or qualitative criteria*. Such criteria are usually unstable

and may vary, depending on the art critic, the time and/or the place; in addition, they bear no relation with the (legal) criterion of originality, as already defined (*Koumantos, G.*, op. cit, p., 121, *Marinos, M.*, op. cit., p. 84).

Taking into account the considerations mentioned above, as well as the fact that it is extremely difficult to perceive the meaning and define the limits of modern art, we conclude that the decision of the Greek legislator not to define the term “artistic work” was justified. His choice to provide (only) a general definition of the term “work” (protected subject matter), followed by an indicative list of works, ensures greater flexibility, since it affords the possibility of copyright protection to any artistic creation (either included in the indicative list or not), that meets the legal conditions of Art. 2 § 1 of L. 2121/1993, as stated above.

Answers to Questions 1.4- 1.6

by **Sylvia Stavridou**, Assist. Prof. Democritus University of Thrace

1.4 Have court decisions provided any rulings on the availability of copyright protection for contemporary forms or types of artistic expression e.g. surveillance art, installations collage, performance art, conceptual art.

In Greek copyright system, the Law 2121 of 1993, Article 2 which is dedicated to the protected subject matter, provides for the definition of a copyright protected work: “The term work shall designate any original intellectual literary, artistic or scientific creation, expressed in any form ...”. This wide approach of the notion of work leaves open the possibility of copyright protection for any kind of work, even for contemporary forms or types of artistic expressions, as long as the following three main elements are fulfilled: a) the creation is a product of intellectual procedure; b) the creation is marked by originality; c) the creation is expressed in any form perceived by the human senses.

As long as the creation examined is a direct result of the creativity of a human mind, which reflects the personality of, its creator the first of the three conditions is fulfilled.

Furthermore, the notion of originality suggests that the creation bears elements and characteristics, which differentiate it (even slightly) from other similar creations of the same group of creations. According to judicial position, the originality of a work consists of its particular individuality, due to the personal contribution of its creator (Court of Appeal of Athens, 885/2009).

Crucial criterion for the recognition of originality is the estimation that, under similar circumstances and with similar goals, no other creator could be logically possible to create the same work. Otherwise, the work should present an individual particularity or a minimum level of “creative level” (in German: “Erschöpfungshöhe”), which defines and differentiates it from routine tasks or other similar well known works. This uniqueness can be retrieved from elements of the work, such as its theme, conception, order, expression e.t.c., according to its sort and nature. (Court of Appeal of Athens, 885/2009, Areopag 152/2005).

The possibility of including as many types of copyright protected works as possible has been the main scope of the legislator, therefore the enumeration of copyright protected works and groups of works is indicative and not exhaustive (Article 2 par. 1 and 2). According to paragraph 4 of Article 2 Law 2121 of 1993, the protection afforded under copyright Law shall apply regardless of the value of the work and its destination and regardless of the fact that the work is possibly protected under other provisions.

Therefore, even if Greek courts had not up to now the opportunity to refer on contemporary forms of artistic expression, the indicative enumeration of copyright protected works in Law and the element of originality as defined above leave open the possibility of copyright protection for artistic expressions such as surveillance art, installations, collage, performance art, conceptual art.

1.5 Are there any judicial decisions/academic opinions on other forms of expression, whether protected or not (e.g. perfumes)?

No judicial decisions are known to us referring to the protection of other forms of expression (such as perfumes). As mentioned above the copyright protection requires “expression in any form”. According to the academic opinion expressed on this issue, the fixation material of a copyright protected work should be available to the senses of sight and hearing, and not to the senses of smell, taste or feel (Marinos M., Copyright Law 2004, p. 70).

1.6. Is there case-law related to the protection of sporting events (soccer game, marathon race, ice skating competition etc)? What is the basis of the protection? (dramatic or choreographic work, other?).

The protection of sporting events is mainly achievements of physical capacities and they do not have the characteristics of intellectual creations. Only in particular cases of sporting events, such as synchronized swimming or artistic ice-skating, there are elements of artistic creation in executed choreography. In these cases a copyright protection of the athletes may be recognized.

Despite the lack of protection for sporting events, the Greek legislator recognizing the great economic importance in the exploitation of sporting events has established a “sui generis” right acquired to the host of sporting events. This regulation does not belong to the copyright law system but makes part of a law regulating sport activities (Law 2725 of 1999).

According to Article 84 of Law 2725 of 1999, sport clubs, sport companies and federations have the exclusive right to authorise or prohibit broadcasting and rebroadcasting of sporting events taking place in their fields, as well as to authorise or prohibit the fixation and distribution to the public copies of the sporting event. This sui generis right is an economic right given primarily to its rightowner (sport clubs e.t.c.) for the following modes of use:

- a. Broadcasting and rebroadcasting to the public by any technical means or methods of sporting events they host
- b. Fixation or reproduction by any means and on any material of the above sporting events, as well as their highlights.
- c. The distribution of the copies by transfer, rental or public lending.

The rightowner may conclude contracts assigning exclusive or non-exclusive right to licensees under remuneration, which shall be determined, by contract.

The exclusive sui generis right on sporting events may not be enforced in cases of sporting events of major interest for Greek society, where the widest possible access of public to such events must be ensured (Article 11 par. 1, Law 2644 of 1998, Article 15, Decree 109 of 2010). The scope of this regulation is to enable the public to watch events of major interest through free access media, and adopts the community obligation on major events, expressed in the Audiovisual Media Services Directive (AVMSD) Directive 2010/13/EU and its former regulations contained in Television Without Frontiers Directives (TWFD).

2. Creativity – the Originality Standard

Answers to Questions 2-7

by **Dionysia Kallinikou**, Professor, University of Athens

and **Evangelia Vagena**, Counsellor at Law, Hellenic Copyright Organization

2.1 How does your legislation set out the requisite originality standard?

Article 2 par. 1 of Greek Copyright Law considers as a work “any original intellectual literary, artistic or scientific creation, expressed in any form...”. The criterion of originality is a necessary requirement for protection but the law does not define “originality”. A specific definition of originality is introduced only for computer programs and databases according to the acquis

communautaire. A computer program is protected if it is original in the sense that it is the author's personal intellectual creation (article 2 par. 3 of Greek Copyright Law). Databases, which, by reason of the selection or arrangement of their contents, constitute the author's intellectual creation, are protected as such by copyright (article 2 par. 2a of Greek Copyright Law).

2.2 Does the legislation or case-law suggest a different test of originality is imposed for different kinds of work?

Different criteria have been used by Greek theory and jurisprudence to determine whether a work is to be considered as original or not. The personal element of the creation as a product of human mind constitutes the criterion of originality. A work is original when it is the result of the personal contribution, when it expresses the author's personality, when it represents some individuality. Another criterion applied is the "statistical uniqueness". According to this criterion a work is original if under the same circumstances no other person would create the same work. Neither the legislation nor the national case-law impose a different test of originality for different kinds of work.

2.3 For compilations / collections is the standard identical to that provided for in relation to works? [For common law jurisdictions there are significant differences on the standard e.g. IceTV (Aust) CCH (Canada). How has "sweat of the brow" been treated in recent case-law?]

Compilations/collections of works are protected provided the selection or the arrangement of their contents is original (article 2 par. 2 of Greek Copyright Law). Such compilations are anthologies, encyclopaedias, journals and periodicals and other collections. Databases are protected according to the *acquis communautaire* not only by copyright as original works but also by the *sui generis* right. It is well known that in a preliminary ruling relating to sports betting the European Court of Justice in case C-444/02 (9 November 2004) answered several questions referred by a Greek Court concerning the *sui*

generis protection of databases providing guidance on the definition of the term “substantial investment” within the meaning of article 7 par. 1 of the Directive 96/9 (Fixtures Marketing Ltd v. Organismos Prognostikon Agonon Podosfairou AE/OPAP).

2.4 Does your legislation/case law recognise copyright protection for collections such as television listings, yellow pages/white pages telephone directories? If yes, what is protected (headings, content, or both?) If not, why is protection denied (e.g. spin-off theory, competition law considerations).

Article 2 par. 1 of Greek Copyright Law contains a non-exhaustive list of different of categories or types of works. This list is completed by an enumeration of different types of derivative works, collections of works or collections of expressions of folklore or simple facts or data (article 2 par. 2), as well as by provisions concerning databases and computer programs. Television listings and yellow pages/white pages telephone directories are not expressly contained in this enumeration. Television listings and yellow pages/white pages telephone directories could be protected by the sui generis right (database right) or by unfair competition law. Case law recognises the sui generis database protection to maps contained in directories with information items for drivers and professionals (District Court of Athens – Single Judge 6544/2006 DIME 1/2007,90).

3. Achieving Access for the visually impaired

3.1 Does your national legislation provide exceptions or limitations in favour of the visually impaired? For wider categories of disabled persons? On what condition: is there a remuneration right or right to compensation? there a remuneration right or right to compensation?

Yes, Law 2121/1993, as it has been amended, in article 28A with the title Reproduction for the Benefit of Blinds and Deaf-mute provides that the

reproduction of the work is allowed for the benefit of blinds and deaf-mute, for uses which are directly related to the disability and are of a non-commercial nature, to the extent required by the specific disability. According to the same provision the conditions of application of this provision may be determined as well as the application of this provision for other categories of people with a disability by resolution of the Minister of Culture. On this legal basis, the resolution ΥΠΠΟ/ΔΙΟΙΚ/98546 (GOVERNMENT GAZETTE: B 2065/24 OCT 2007) was issued.

No remuneration right or right to compensation for the authors or the publishers is provided for the reproduction. The bodies being competent to reproduce the work (non-profit organization or association or union or other pertinent organization, whose main mission is to provide specialized services related to the education and training or to the facilitation of education and training of the blind, see below answer to question 3.2) are only obliged to purchase one copy of the work to be reproduced (ar.6 par.4 of the Ministerial resolution ΥΠΠΟ/ΔΙΟΙΚ/98546).

Those competent bodies may also charge the beneficiary for the reproduced copy of the work but in this case the cost charged will not exceed the reproduction cost (ar.7 par.1 of the Ministerial resolution ΥΠΠΟ/ΔΙΟΙΚ/98546).

3.2 What kind of works are or would be subject to limitations or exceptions? Literary works only? Works and performances fixed in sound recording? Will the visually impaired or other beneficiaries of the exceptions or limitations obtain copies of covered works directly, or only via libraries or other institutions?

The kind of works which are subject to the limitation of ar.28A of Law 2121/1993, as it has been amended, is defined in ar.4 of the resolution ΥΠΠΟ/ΔΙΟΙΚ/98546 of the Minister of Culture: "Any work of discourse or science, which cannot be perceived in its existing form by the beneficiaries, may be reproduced for their benefit in order to obtain a form that they can perceive. The limitation of this property right shall not apply to the source code

of computer programmes.” Therefore only literary works are subject to the limitation.

The visually impaired cannot obtain copies directly. They have to apply to one of the competent bodies described in ar.2 of the Ministerial Resolution. Those bodies are the only competent to reproduce the work pursuant to article 28A of Law 2121/1993. They include any non-profit organization or association or union or other pertinent organization, whose main mission is to provide specialized services related to the education and training or to the facilitation of education and training of the blind and the other beneficiaries. In case of doubt as to whether a body is entitled to proceed to the necessary actions the Hellenic Copyright Organisation (HCO) makes the final decision. The HCO maintains also a list of all competent bodies.

3.3 Are the exceptions and limitations confined to the reproduction of the work? If making available or adaptation is possible, on what conditions?

Yes, the limitation as provided applies only to legitimately published works and it is confined only to the reproduction of the work in special forms and solely for the benefit of beneficiaries referred to in article 3 of the Ministerial Resolution ΥΠΠΟ/ΔΙΟΙΚ/98546, for uses which are directly related to the disability and are of a non-commercial nature, to the extent required by the specific disability and provided that the terms of application referred to in article 7 of the same resolution are complied with. The work cannot be amended or changed without the authorization of the author and the publisher, in relation to each one's rights. Such prohibition does not concern changes relating to layout and pagination, which are dictated by the need to convert the form of the work to serve the needs of beneficiaries.

3.4 Has your Government expressed a view on support for international initiatives (e.g. World Blind Council Treaty)?

There has been no official statement expressing support for any particular international initiatives.

3.5 On an extra-legal basis, are there any market initiatives, or business practices, that your national group are aware of?

We are not aware of any market initiatives. The only initiative which may help to this direction indirectly is the function of the online licensing platform “Aspida”(<http://aspida.osdel.gr/ERMS/>) of the Greek collecting society for authors and publishers “OSDEL” which enables the licensing of all represented repertoire. The platform offers the possibility of browsing the online catalogue of works and authors.

4. Access to the Internet as a Human Right

4.1 Does your legislation/constitution/case-law define access to the Internet as a specific [or human] right?

There is a provision of the Greek Constitution, which defines Participation in the Information Society as a specific right. According to article 5A par. 2 of the Constitution: “All persons are entitled to participate in the Information Society. Facilitation of access to electronically handled information, as well as of the production, exchange and diffusion thereof constitutes an obligation of the State, always in observance of the guarantees of articles 9, 9A and 19.”

4.2 Are there any specific restrictions or limitations on this right [Europe: it is not necessary to refer to ECHR but any national decisions or rulings on ECHR should be mentioned]?

There are no specific restrictions on this right.

5. Orphan Works

5.1 Are there extant legislative provisions allowing access/use in relation to orphan works? What kinds of work are involved? Performances?

There are no extant legislative provisions allowing access/use in relation to orphan works.

5.2 On what conditions? Is there a remuneration right or right to compensation? Is there a court or administrative procedure to be satisfied prior to use?

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5.3 Are there proposals for the introduction of, or changes to, orphan works provisions?

During the discussions of a recent law standing committee for the amendment of copyright legislation, there have been some proposals for the introduction of orphan works provisions following the example of foreign legislation such as the Canadian one but there has been no official action towards this direction.

6. Graduated Response Laws or Agreements

6.1 Within the specific context of p2p filesharing of audio-visual works and sound recordings, does your national law contain laws (or proposed laws) providing for a graduated response “solution”? On what conditions? Three strikes, etc.?

6.2 Do such proposals include an educational aspect – enhancing awareness of intellectual property protection, as well as measures to (1) make Internet access more secure in order to prevent illegal activity; (2) – favour availability of legal services?

6.3 Is there a court procedure and/ or administrative agency that oversees the proceedings or authorises interruption or termination of Internet access?

6.4 Is it possible to assess the effectiveness of the implementation of these measures, both as a matter of stemming piracy, and with respect to the development of legal services?

6.5 Is there any case-law on the possible (own initiative) use of blocking or filtering technology by an ISP, as distinct from situations where an ISP is required by a court or administrative agency to terminate subscribers access (i.e. injunctive relief)?

6.6 Are there private agreements among copyright owners and Internet service providers that function similarly to “3-strikes” laws?

6.1-6.6 There are no legislative provisions or propositions providing for a graduated response system in Greece. There are not private agreements among the parties that function similarly.

7. Private Agreements and UGC

7.1 Are there private agreements among copyright owners and hosts of UGC content sites regarding the filtering of content posted to the sites? Are there inter-industry statements of “best practices” regarding filtering? Have government authorities in your country undertaken initiatives to encourage the adoption of such accords?

7.2 How is the filtering to be accomplished?

7.3 Have there been any cases concerning such agreements or “best practices”?

7.4 Outside the existence of such accords, have courts themselves imposed remedies requiring measures such as “take down, stay down”?

In Greece there are not agreements among the parties regarding the filtering of content posted to the sites.
