



Court of Appeal rules on the duration of the agreements concluded prior to Copyright Law 2121/1993

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Under Greek Copyright law, both the transfer and exploitation contracts related to copyrighted works can be limited in terms of powers, purpose, duration and extent of means of exploitation. In relation to the limitations regarding the duration of such contracts, Article 15 par. 2 of Greek Law 2121/1993 provides that "if the duration of the transfer or of the exploitation contract or of the license is not specified and, if something different does not emerge from the commercial practices, this duration is deemed to be limited to five years". This provision was enacted in order to protect the author, and initial holder of copyright, from excessively long - term commitments related to his intellectual property creation. Therefore, in the absence of an express and unquestionable agreement between the parties regarding the duration of the contract, the latter is limited to five years.

A contract clause stipulating that property rights are transferred or granted "for the entire legal term of protection of the copyright" implies that the parties have agreed for a fixed term agreement which will end upon expiration of copyright protection under the law. However, if the commitment of the parties to the contract for a specific time period or the entire term of copyright protection is not clearly and undisputably stated in the contract itself, the provision in Article 15 par. 2 is automatically applicable.

Furthermore, Article 68 of Law 2121/1993, entitled "non-retroactivity of the law", in its par. 3, states that "contracts concluded before the entry into force of this law shall be governed from the previous law after one year from the entry into force of the present law". The main aim of this provision is to subject earlier intellectual property works and performances to this law, but only for the subsequent (after the entry into force of the law) period. As a result, with reference to contracts that were drawn up before the entry into force of Law 2121/1993, rights of beneficiaries and any obligations would be governed by the new law as from 5 March 1994 (i.e. one year after the law came into force). The provision refers to all contracts which were concluded for the exploitation of any kind, both the contracts for the transfer of the (property) right and the contracts for the exploitation of the work or the license to exploit it. It is noted, though, that this regulation does not cover the type form of legal transactions concerned, in respect of which the previous law continues to apply. The purpose of the above provision is also to protect the author of an intellectual property work and initial right holder of copyright from earlier contractual arrangements that bind the copyright by means of total or partial expropriation or by contractual restrictions in a way that is not acceptable to the modern legislator.

The interpretation and application of the above provisions was the subject matter brought before the Greek courts, in a long- lasting dispute regarding the exploitation rights of an historical and very popular Greek film which was produced back in 1983. The plaintiff, a limited liability company which was founded immediately after the production of the film by the initial producers of the film and claimed to have acquired copyright from them, filed a lawsuit requesting the cease of the exploitation of a "new version" of the movie which was produced by another entity with the consent of the director of the film. The defendant in this case had obtained an exploitation license directly from the director of the film (and at the same time one of the initial producers also) who, according to Greek law, is the "author" of the cinematographic work and thus initial holder of copyright.

The Court of Appeal with its decision rejected the lawsuit filed by the plaintiff on the ground that the plaintiff lacked legalization to file the claim since the duration of the copyright transfer was not specified between the parties and, thus, pursuant to Article 15 par. 2 of the Law 2121/1993, the contract between the initial producers of the film and the plaintiff had expired before the filing of the claim. According to the Court's reasoning, as long as it is not proven that a specific duration of the transfer of rights contract is determined, the above provision of Article 15 applies to those contracts that were concluded before the entry into force of this law. The term of these contracts expires, with regard to all the powers transferred, on 5 March 1999, namely 5 years after the entry into force of Law 2121/1993 and such powers revert to the initial holders of the intellectual property rights. In the case of a cinematographic film the director is deemed to be the author and the initial copyright holder. The court took under consideration, in this case, that the duration of the limited liability company, which had the capacity of the plaintiff, was set for five years starting in 1983 and was extended only for a decade when the company was dissolved in 1988 and the stage of liquidation followed. This was a particularly crucial fact that was taken into account by the court in order to determine that there was no intention by the initial producers of the film to transfer the intellectual property rights to the plaintiff for the entire legal term of copyright protection, as opposed to the claims of the plaintiff. The Court of Appeal held that as from 1999, the intellectual property rights in the cinematographic film reverted to the initial right holders. More specifically, the copyright reverted to the author of the movie who was the initial copyright holder and thus had the power to further exploit his intellectual property creation. The Court of Appeal reiterated the Supreme Court's prior reasoning in the same case, according to which the existence of an agreement relating to the duration of the copyright transfer was essential for the outcome of the trial in the context of the above provision of Article 15 par. 2

of Law 2121/1993. As a result, the action was rejected as totally unfounded and the Court of Appeal held that the Court of First Instance which had initially accepted the action misinterpreted and erroneously applied the evidence as well as the above provisions of Greek Copyright Law. The above decision is of great importance since the case deals with the crucial issue of the duration of copyright transfer and exploitation agreements which were concluded prior to the implementation of Greek Copyright Law 2121/1993.

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