

The protection of musical arrangements under the Greek Copyright Law: legal and practical aspects.

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Abstract

As musical arrangements are increasingly affecting all aspects of the music business and have direct impact towards their authors, the publishers, the recording or performing artists and the record label, this paper discusses how the musical arrangements are protected under the Greek Copyright Act (L. 2121/1993), while references to the respective interwoven international and European legal basis that shaped the current national law are also made. Of course, issues of originality are raised and some logical, legal and musicological solutions are provided in an attempt to assist such cases to be appropriately run. Last but not least, this article also seeks to shed light on the criteria that could establish a distinction between the authors' and arrangers' contribution upon a given material and recognize them through both the international and national legal frameworks.

Introduction

The art of re-shaping an already existed musical work appeared during the 16th century under the form of variations¹ and perhaps musical variations could be characterized as a sort of precursor for the later arrangements, even though they do not represent exactly the same way of composition. However, and as Joel L. Friedman estimates, the concrete contemporary art of musical arrangements came to the forefront during the 1930s and 1940s².

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¹ For a detailed description on variations, see Anja Volk, W. Bas de Haas & Peter van Kranenburg (2012), *Towards Modeling Variation in Music as Foundation of Similarity*, pages 1088-1090.

² Joel L. Friedman (1980), *Copyright and the Musical Arrangement: An Analysis of the Law and Problems Pertaining to This Specialized Form of Derivative Work*, 7 Pepp. L. Rev. 1, page

Admittedly, the musical arrangements as artworks enrich the wide musical spectrum and trigger the human spirit, as regards to the composers, analysts and listeners. Arranging music is not just a mimic technique that embellishes a pre-existing musical work in order to make it more attractive, but incorporates a variety of skills that an arranger should have in order to be able to produce a totally new work if he wishes to avoid the trap of plagiarism³. More specifically speaking, when a composer decides to re-orchestrate a musical piece, the profound study of the essence of rhythm and timbre, the pitch and the way the harmony is developed in a score or the dynamics that are used are indispensable elements of knowledge. Furthermore, the creation of various textures depends on the arranger's personal criterion when treating musical techniques (i.e. counterpoint, transposition, transformation, diminution and augmentation, doubling and chording, cut and paste techniques or any other melodic embellishments that could be used within a composition) and reflects his mentality, while his ability to reformulate a given melody for different resources and receivers is found among the appraisable attributes a composer should have in order to effectively deal with such a field, as there exist many different branches of musical creation he/she should be aware of and capable to crystallize (e.g. soloists' or conductor's scores, instrumental or vocal groups, orchestras, chamber ensembles, jazz quartets or pop bands, choirs or studio remixes, all coupled with their accompaniment, registers and range).

Inevitably though and as technology advances, miscellaneous new options and demands appear; for example, computer generated scores seem to replace the traditional handwritten ones, since they provide new outlets and tools: new instruments are added, new techniques are included and the computerized programs facilitate the constant and – almost – bulky production of musical arrangements. In addition, the scenery of musical arrangements embraces now another type of arrangers as well: the studio engineers and producers, who are often required to have arranging skills beyond the ability to add new instruments and voices to compositions, while they may be also asked to coordinate and implement

126. Available at: <http://digitalcommons.pepperdine.edu/plr/vol7/iss1/5> [last accessed 09/06/2017]

³ Ibid.

such performances in the studio context. As a matter of course, musical arrangements are increasingly affecting all aspects of the music business and have direct impact towards the authors, the publishers, the recording or performing artists and the record label⁴, nourishing thus the music industry in general. With these constantly emerging new data, authors' creativity within the music sector seems to be promoted and musical arrangements start to share a vital role into the competitive art-market⁵. However, their presence undoubtedly entails several financial and commercial ventures, rendering thus their protection an incumbent task to be fulfilled; of course, such protection is embraced by the relevant rules of copyright law, which however vary upon the different jurisprudential systems around the globe.

For the purposes of this article, the presence of musical arrangements and the way they are protected will be discussed through the lens of the Greek Copyright Law, while references to the respective interwoven international and European legal basis that shaped the current national law will be of central concern too. Since we are dealing with copyright law, issues of originality will be raised, while the legal status of musical arrangements will permit us to elucidate whether arrangers commit a kind of plagiarism when re-forming an already existing work or they compose a totally independent artwork that is eligible for legal protection. The article will also try to shed light on the criteria that could establish a distinction between the authors' and arrangers' contribution upon a given material, while the rights that correspond to each category will be also discussed through some widely known examples that could illustrate the facts. Last but not least, the question as to whether the current copyright regime provides a basis of adequate protection along with the profits that the music industry may have from such a situation will be approached in an attempt to better understand the wider context.

⁴ See Mark J. Davis (2010), *Legal Issues in the Music Industry*, pages 2-7.

⁵ See for example, through a comparative examination, the profiles and earnings of people that are closely connected with the subject in question, on the presentation of the Career Development Center of the Berklee College of Music, *Music Careers in Dollars and Cents* (2012). Even though this research, as indicated in the handbook, is not comprehensive, it reflects the attitudes of the most prevalent and competitive music industry worldwide. Available online: at http://www.berklee.edu/pdf/pdf/studentlife/Music_Salary_Guide.pdf [last accessed on 06/06/2017]

1. Copyright law in the musical context

1.1. International legal basis

The idea of copyright law appeared essentially during the 19th century⁶, when it was made clear that authors do have legal rights upon their creations. On 9th September 1886 and at Victor's Hugo abetment, the *Berne Convention for the Protection of Literary and Artistic Works* (hereinafter 'the Berne Convention') was signed, as the ripe outcome of a long standing tradition and reflection on the subject matter.

For the musical context, this Convention seems to represent the milestone not only as far as the musicians' rights are concerned, but also as regards to any musical component. This becomes even more important if we bear in mind that even until the Romantic era, music was performed and perceived only under the hard and usually unfair rules of patronage⁷. Evidence for in support of this position could be drawn from Art.2§1 of Berne Convention that included musical compositions with or without words within the general umbrella of "artistic works", establishing thus, for the first time, their eligibility of legal protection. Additionally, according to Art.2§3, musical arrangements are enshrined as derivative works and shall be protected as the original ones without prejudice to the copyright of the original work, while article 11 recognizes certain rights upon musical works, laying particular emphasis to public performances (or communication to the public of a performance), which should be controlled by the author himself⁸.

It also worths mentioning that the Berne Convention takes precedence over another international treaty, the *Universal Copyright Convention* (hereinafter

⁶ Margit Livingston and Joseph Urbinato (2013), "Copyright Infringement of Music: Determining Whether What Sounds Alike Is Alike", in *Vanderbilt Journal of Entertainment and Technology Law*, Volume 15, No 2, Winter 2013, page 233.

Yet, we should mention that this concept is backdated to ancient Greece, where Aristotle and the Stoics introduced and supported for the first time the rights of reflective, creative and inventive citizens under the doctrine of natural law in order to maintain the natural justice and universal equilibrium, see Amelia V. Vetrone, (2003), *The Legal and Moral Rights of All Artists.*, pages 11-12.

⁷ Ibid, pages 233-238.

⁸ See, http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html [last accessed on 10/06/2017]

'U.C.C.', Geneva, 1952), which was drafted under the auspices of UNESCO and tended to attract any State that was chary of ratifying the strict rules of Berne Convention. Nevertheless, the U.C.C. provides musical arrangements with less protection than its ancestress, since, as it could be concluded from the legal text, it deals with them in a much more general context (see Article 1)⁹.

Certainly, both aforementioned Conventions were only the initial kick towards the legal protection of music and its various ramifications. Immediate aftermath of this global sensitization over this sector was the adoption of the *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (hereinafter 'The Rome Convention') in 1961, where the related rights of these categories were demarcated from the core intellectual property rights. The main contribution of the Rome Convention, despite its outdated nature nowadays, could be found in its resilience to the national treatment that paid due regard to the related rights and can still serve as a guide for the introduction of legal arrangements in many countries. However, the most significant weakness of this Convention is undoubtedly the absence of any provision regarding performers' moral rights¹⁰, an omission that was restored by the *WIPO Performances and Phonograms Treaty* (WPPT) in 1996 (Article 5),¹¹ which has contributed to a large extent to the modernization of the Berne Convention at the same time. Last but not least, the *WIPO Copyright Treaty* (WCT) of the same year demonstrated the importance of the related rights and conduced towards their attuned keeping up to the technological evolution. However and as Kyprouli points out¹², their wide acknowledgement was affected by the *Agreement on Trade-Related Aspects of Intellectual Property Rights*

⁹ Paraskevi Naskou-Perraki & D. Bachtsevanidou (2008), *UNESCO Conventions*, pages 193-235.

¹⁰ Konstantia Kyprouli (2000), *The related rights of Performing Artists*, page 481-488 [in Greek].

¹¹ Ibid, pages 494-495 & 500. Also see, *Summaries of Conventions, Treaties and Agreements* (2011), administrated by WIPO, page 49, available online at: http://www.wipo.int/export/sites/www/freepublications/en/intproperty/442/wipo_pub_44_2.pdf [last accessed on 10/06/2017]

¹² Ibid, page 490.

(TRIPs Agreement) that was signed in 1994 and which brought to the surface other factors for consideration in terms of mutual benefits and conflict of interest¹³.

Greece constitutes a part of all aforementioned Conventions and more specifically, since 1921, it is a member of Berne Convention along with all its revisions, while, via the Legislative Decree No 4254/1962, Greece has ratified the U.C.C. (except its revision of 1971). Furthermore, in 1993, Greece adhered to the Rome Convention and through Act No 2148/1993 it became a member of the Geneva Convention of 1971 regarding the Protection of Producers of Phonograms. Finally, the Acts No 2290/1995, 3184/2003 and 3183/2003 incorporated into its national law the TRIPs Agreement, the W.C.T. and the WPPT Conventions respectively¹⁴.

1.2. European Union legislation

Having, thus, already considered the international legal basis regarding the presence and protection of musical pieces and arrangements, it is also reasonable to have a look at the European legal framework, since it shares an equally important role to the formation of each national legislation. As Giuseppe Mazzioti notes, the European Commission seems to pay a great consideration to the musical sector along with its efforts to harmonize the Community copyright legislation¹⁵; in fact, the remarkable number of EU Directives, backdated to 1991, together with the participation of all European countries to the Berne Convention justify this argument. However, the EU copyright legislation has raised a great controversy among the Member States, beginning with the Council Directive 93/98/EEC (the so-called *Copyright Duration Directive*), which numbers six judgments of non

¹³ See for instance the article 14, found in: http://www.wto.org/english/tratop_e/trips_e/t_agm3_e.htm#1 [last accessed on 10/06/2017].

¹⁴ See, Irini Stamatoudi and Georges Koumantos (2012), *Greek Copyright Law*, in P.E. Geller (ed.) *International Copyright Law and Practice*, pages 38-39.

¹⁵ Giuseppe Mazzioti (2011), "The Politics of European Online Music Rights", *Music Business Journal* of Berklee College of Music, available online <http://www.thembj.org/2011/12/the-politics-of-european-online-music-rights/> [last accessed on 10/06/2017].

compliance hitherto¹⁶, due to different jurisprudential grounds (common and civil law countries). Still, no matter of what declinations appear, the European Union has already proceeded to the adoption of several legal instruments that are closely related to our subject. Perhaps, we could make a short reference to the most important of them, which will be analyzed through the national perspective. Thus, apart from the above-mentioned Copyright Directive, there also exist the EU Directive 2001/29/EC, where the author's and neighboring rights are harmonized with the contemporary Society of Information, the EU Directive 2004/48/EC regarding the enforcement of intellectual property rights, the EU Directive 2006/115/EC on the rental right and the lending right as well as certain rights that are related to copyright in the field of intellectual property and the EU Directive 2006/116/EC that deals with the term of protection of copyright and certain related rights¹⁷. Moreover, the most recent activity concerning the use and dissemination of musical works throughout the Community was the Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 that deals with the collective management of copyright and the related rights, as well as the multi-territorial licensing of rights in musical works for online use in the internal market¹⁸ and tries to facilitate and shield the musical works towards the demands of the digital era, increasing in this way the EU degree of competition upon its adoption.

2. Musical Arrangements and Greek Copyright Act (L. 2121/1993)

Copyright Law constitutes a branch of the realm of intellectual property law and could be characterized as the protective umbrella for authors of original works of artistic, literal or scientific nature. It grants them absolute and exclusive rights of economic and moral nature that provide them with the power to control (permit or

¹⁶ See Ramses Alexander Wessel & Steven F. Blackmans (2013), *Between Autonomy and Dependence: The EU Legal Order Under the Influence of International Organizations*, page 205 (footnote 32).

¹⁷ For a detailed description see, Pierrina Koriatopoulou-Aggeli & Charis Tsigkou (2008), *Intellectual Property*, pages 644-655, 670-689 & 700-735 [in Greek] and Estelle Derclaye (2009), *Research Handbook on the Future of EU copyright*, page 13.

¹⁸See: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0026> [last accessed on 09/06/2017].

prohibit) certain actions upon their works, while at the same time it enables them to recognize and enforce such rights in order to benefit from their creations¹⁹.

Music, due to its aural perception and unique character, differentiates itself from the other genres of creative works that are understood and estimated by the optic human system²⁰. Although this differentiation may not present any legal significance at first sight, it involves considerable impact on copyright doctrines that stand as their umbrella of protection²¹.

If we were to define musical arrangements and the rights interwoven with them under the Greek Copyright Act of 1993, we would support that musical arrangement (or orchestration) is a form of derivative work, which could be considered as any alteration of the original-primary lawfully published work, either to its rhythm or its harmony or instrumentation that renders it a totally new and independent musical piece²², provided that its content is authentic (article 2§2).

In any case, though, the arranger should have the consent of the author of the primary piece or of his beneficiaries, as in any different case and according to articles 3§1(c) and 4§1(c), both the economic and moral rights of the author are prejudiced²³. Satisfying thus this condition, the author of the derivative work is presumed to be the natural person, whose name appears on a copy of his composition (i.e. the score or the cover of a CD), in such a way that is usually employed to indicate authorship (article 10§1)²⁴. In other words, the arranger is recognized as the author of the derivative work without resort to any formality (article 6§2), enjoying equally the same rights as the creator of the primary work (i.e.

¹⁹ See, Irini Stamatoudi and Georges Koumantos (2012), *op.cit.*, page 5.

²⁰ Margit Livingston and Joseph Urbinato (2013), *op.cit.*, pages 262-263.

²¹ *Ibid.*, page 230.

²² Pierrina Koriatopoulou-Aggeli & Charis Tsigkou (2008), *op.cit.*, page 126.

²³ *Ibid.* See also, and Socrates Provatas & Mania Tsoumita (2007), *Intellectual Property Law, Dictionary of intellectual and related rights of Artists, Journalists and Editors*, page 120 [in Greek]. Nonetheless, in case that an arrangement is issued without the consent of the author of the prior composition, apart from the sanctions for the infringement, the Greek Copyright Law does not impede the arranger to ask protection against third parties: see, Irini Stamatoudi and Georges Koumantos (2012), *op.cit.*, page 12.

²⁴ *Ibid.*, pages 501-502. The presumption of the authorship is rebuttable and, when invoked, the burden of proof is reversed. Under the incorporation of EU Directive 2001/84/EC, the same applies to the beneficiaries as far as the protected item is concerned.

the economic and moral rights, according to articles 3§1 and 4). By the same token, the term of copyright protection of the derivative work lasts throughout the arranger's life, plus seventy years after his death (article 29§1)²⁵, without being affected by the copyright term of the primary composition.

As Tsigkou underlines²⁶, for the financial 'exploitation' of such a derivative work, apart from the consent of the arranger, the permission of the author of the first artwork is required too, if it is copyright-protected and this protection has not expired (article 2§2). For instance, if we take the *Έξι λαϊκές ζωγραφιές* ("*Six popular sketches*"), initially composed by Manos Hadjidakis, which is an arrangement for piano including popular rebetiko songs by Vassilis Tsitsanis, George Mitsakis, Apostolos Chatzichristos and Apostolos Kaldaras, all copyrights are still active and ascribed to their heirs. On the other hand, when it comes to arrangements of compositions such as for example the various orchestrations of *Ερωτόκριτος* ("*Erotokritos*"), where the copyright of Vitsetzos Kornaros' poem has expired since 1694 and the work is placed in the public domain²⁷ - as it also happens to the orchestrations in form of opera by Alexander Katakouzinis and Alekos Alibertis²⁸ - the relevant musical arrangements by contemporary composers²⁹ require no

²⁵ The application of 70 years *post mortem auctoris* refers to both economic and moral rights. See Irini Stamatoudi and Georges Koumantos (2012), op.cit., p. 19 & 45.

²⁶ Pierrina Koriatopoulou-Aggeli & Charis Tsigkou (2008), op.cit., page 126 & 367.

²⁷ It is noteworthy that according to article 29§2, after such expiration, the State, represented by the Minister of Culture, may exercise the rights relating to the acknowledgement of the author's rights of paternity and integrity, deriving from his relevant moral rights (article 4§1b-c).

²⁸ The opera "Aretousa of Athens" was performed in 1861 in Odysos, while Alekos Alibertis's orchestration was presented in 1935 at Olympia Theater.

²⁹ See for example: (a) Stavros Xarchakos "Syllogi" (1974), LP, by EMI COLUMBIA, Cat#2J 064 70124 and EMI Odeon, Cat#SCXG 124, (b) "Erotokritos: Nikos Xylouris-Tania Tsanaklidou-Christodoulos Chalaris" (1976) by MINOS EMI, (c) Nikos Mamagkakis – Vitsetzos Kornaros "Erotokritos" (1995), by LYRA, Cat#3501, (d) Nikos Mamagkakis, "Erotokritos" (1985), opera in five parts for large orchestra, with Savvina Yannatou and Tassis Christoyannopoulos by SIRIUS, Cat#SMH 85 012/13-EMI, (e) Yannis Markopoulos's arrangement for choir and orchestra in Hellenic Music Festival at Herodeion in 2000, (f) Yannis Markopoulos, "Erotokritos and Areti" (2003), opera in two acts by MERCURY, (g) "Four paths for Erotokritos" in 2000 by LYRA, with the participation of distinguished composers (Loudovikos ton Anogeion, Nikos Xydakis and Psarantonis) and performers (Lizeta Kalimeri, Alkinoos Ioannidis and Niki Xylouri); last but not least the arrangements of Erotokritos by Yannis Tsolkas and Thanassis Gkikas and its by 77 artists in 2011 for the ecological campaign "We play ecologically – We live logically – We act as a team" that took place in Athens.

permission from the primary authors; yet, the consent of the arranger is again obligatory for the economic or commercial exploitation of the artwork, as it pursues the arranger's both economic and moral rights. After all, any prejudice to the derivative work is considered detrimental to the rights upon the underlying work, at the same time. At the end of the day, we should also note that, with regard to arrangements, the limitations on the economic right (articles 18-28C of the Greek Copyright Act) apply and serve as a shield towards the awareness and promotion of the Hellenic Culture as such³⁰.

2.1. The issue of originality in musical arrangements

Speaking for derivative works, the first and most fundamental element that we should clarify, when approaching musical arrangements, is the role of originality that renders an artwork eligible to copyright protection and distinguish this kind of creation from a mere reproduction of the initial composition. We should also emphasize on the fact that not all alterations belong to this category: for example, mechanical, trivial and typical additions to the score or mechanical actions involving conversion of the material carrier do not fall under this case³¹. Hence, when musical plagiarism appears, both legal and musicological points of view should be taken into account³².

Greek Copyright Act, although protecting "any original creation" (article 2§1), does not actually clarify the terms either of "originality" or "creativity"³³. This vagueness may cause a lot of problems, especially in the case of musical arrangements. But how could we tide over this difficulty?

³⁰ See footnote 21.

³¹ Pierrina Koriatopoulou-Aggeli & Charis Tsigkou (2008), op.cit., page 367. See also, See Stephan Fishman (2006), *The Public Domain: How to find and use copyright-free writings, music, art and more*, pages 116-118.

³² Margit Livingston and Joseph Urbinato (2013), op.cit, pages 275 & 295 and Joel L. Friedman (1980), op.cit., page 127.

³³ Irini Stamatoudi and Georges Koumantos (2012), op.cit., page 8. It is noteworthy that Greek Copyright Act protects under its legal umbrella traditional or folkloric musical compositions that constitute part of the common cultural heritage, despite their lack of originality, see Pierrina Koriatopoulou-Aggeli & Charis Tsigkou (2008), op.cit., page 373.

Joel L. Friedman³⁴ refers to three tests, which can be used in order to approach the weigh of originality in a musical arrangement, or, from the other side of the spectrum, to discern the elements of a copyright infringement. These approaches, despite their common-law perspective, could also facilitate the Greek Courts when defining the elements of a statistically unique musical orchestration³⁵. At first, the "significant creativity test", as he calls it, implies an in depth analysis of the arranger's contribution: Is there any intended plagiarism or has the arranger incorporated his own stamp?³⁶ Secondly, the so-called "audio test" involves a comparison between the first musical piece and his derivative one. According to Friedman, if the acoustic examination of an arrangement leaves an impression of newness or novelty when compared to the primordial artwork, it could be subject to copyright. Nonetheless, this approach does not guarantee that the upshot will be an objective and fair finding, since, as stated above, the advancements of technology provide many choices if someone wants to cheat, not to mention that the morphological structure of such a composition may misguide an untrained listener either through the instruments included or the way they sound and resonate. Perhaps, as he suggests, a combination of the two approaches would work best and let the judge decide on actual facts.

A similar approach was also adopted by Tsunashige Shirotori in a more recent paper and could also serve as a guide to clarify the issue of originality regarding musical arrangements in the Greek Copyright Law. As Shirotori³⁷ proposes, there are four basic elements that should be taken into account in such cases and could be summarized in the following ones: (a) the identity of the essential characteristic on expression (of the arranger on the score), (b) the possibility of directly perceiving this

³⁴ Joel L. Friedman (1980), op.cit, page 136.

³⁵ See Irini Stamatoudi and Georges Koumantos (2012), op.cit., page 9.

³⁶ See for example three of the earliest cases that have dealt with this issue: *Jollie v. Jacques* (German case law), *Wood v. Boosey* (English case law) and *Norden v. Oliver Ditson Co., Inc.*, (U.S. case law, 13 F. Supp. 415 (D.C. Mass. 1936) in Joel L. Friedman (1980), op.cit, page 133.

³⁷ Tsunashige Shirotori (2003), "Japanese Case on the Infringement of Musical Arrangement right, Kobayashi et al. v. Hattori", *Center for Advanced Study and Research on Intellectual Property (CASRIP) Newsletter*, Winter 2003, page 2.

Available in <http://www.law.washington.edu/Casrip/Newsletter/2003/newsv10i1jp3.PDF> [last accessed 11/06/2017].

essential characteristic on expression, (c) the comparison of the essential characteristic and its perception under the relevant national law and (d) the requirement of the base on the original composition that establishes not only the originality, but also the derivative nature of the arrangement.

2.2. The related rights on a musical arrangement under Greek Copyright Law

Of course, as already mentioned, the musical arrangements, apart from their authors, embrace all aspects of the music business as well and consequently the Greek Copyright Act enshrines related rights to the respective categories of people that are involved therein, such as the performing artists (articles 46 & 49§1 and §4), the producers and the record label (article 47§1 and §3). More specifically, in the case of performing artists, the copyright protects their personal and particular way of interpretation of a musical composition, via which it is handed down to the audience, entitling them, inter alia, with the right to approve or prohibit any act, upon their recordings, that does not have their consent³⁸, while in the case of producers, their intention to support and finance the intellectual creation along with their relevant investment are subject to copyright protection, which serves as a shield against the international piracy that has gained extensive dimensions and jeopardizes both the pecuniary and non-pecuniary interests of the aforementioned categories³⁹.

It is noteworthy that in case of infringement, the Greek Copyright Law provides for equitable remuneration both for the performers, whose performances are carried on the recordings and the producers of the recordings (article 49)⁴⁰, either when broadcasted (TV, radio) or used for private reproduction (article 18§3), which are payable only via collecting societies (see below). Additionally and with due regard to performers, their right to rental and public lending (article 46§d) is

³⁸ To more detailed description, see Pierrina Koriatopoulou-Aggeli & Charis Tsigkou (2008), *op.cit.*, page 235-236.

³⁹ *Ibid*, page 440.

⁴⁰ See also article 72§4.

harmonized to the EU Directive 92/100/EEC⁴¹, whilst their moral right (article 50), albeit not extended to the author's one⁴², establishes their full acknowledgement to the paternity of their performance; of course, they are also entitled to prohibit any alteration of their performances (a right that cannot be transferred according to article 12§2)⁴³ and their property rights last for fifty years after the date of their performance (live or fixed – but lawfully published or lawfully communicated to the public)⁴⁴, which though cannot be less than the performer's life (article 52§c). This provision similarly extends to phonogram (or sound recordings) producers, who can enjoy for half a century their economic rights (article 52§d). For example, Nikos Skalkotas' arrangement of the "36 Hellenic Dances" for symphonic orchestra, written during 1933-1936, even though it is still under the legal umbrella of copyright for another 2 years (since the composer died in 1949)⁴⁵, the neighboring rights deriving from its first publication in Greece (as a compact whole) in 1990⁴⁶ grants performers, producers and the record labels economic (and moral) rights until 2040⁴⁷.

⁴¹ Along with the articles 46, 47 and 49 (see article 71§2). However, this Directive was replaced by the EU Directive 2006/115/EC. Articles 46§2 and 47§1-2 are harmonized with the EU Directive 2001/29/EC (article 71§6).

⁴² Konstantia Kyprouli (2000), *op.cit.*, page 495. The Greek Copyright Act (article 50) does not specify the duration of the moral right, as it also happens to the French Code of Intellectual Property (article 212-1). However, WPPT Treaty makes a stipulation of 50 years after the death of the performer equating it with the economic rights (article 5).

⁴³ *Ibid*, page 488-89. Furthermore, in comparison with the Rome Convention, the provisions of Greek Copyright Law concerning the producers of sound recordings and performers' moral right are considered to be more progressive than their international legal basis.

Also see, Pierrina Koriatopoulou-Aggeli & Charis Tsigkou (2008), *op.cit.*, pages 440-441.

⁴⁴ For performers' of phonograms amended term of protection (up to 70 years), see EU Directive 2011/77/EC amending Directive 2006/116/EC and Law No. 4212/2013 on the Implementation of Directive 2011/77/EU of the European Parliament and the Council of 27th September 2011 and Directive 2012/28/EU of the European Parliament and the Council of 25th October 2012 into Greek Law and amending of Law No. 2121/993 on "Copyright, Related Rights and Cultural Matters" in:

<http://www.wipo.int/wipolex/en/details.jsp?id=16618> (last accessed on 20/06/2017).

⁴⁵ Article 29§1.

⁴⁶ Nikos Skalkotas, "36 Hellenic Dances", performed by Ural State Philharmonic Orchestra under the direction of Byron Fidetzis. Double CD 052/53 released by LYRA and Musical Publications of the University of Athens.

In <http://www.mmb.org.gr/page/default.asp?id=2993> [last accessed on 20/06/2017].

⁴⁷ Article 52§c-d and article 46§4.

2.3. Collecting societies

The existence of such organizations is justified under the authors' and performers' inability to follow the wide and simultaneous reproduction of their works, especially nowadays when technology makes great and fast strides⁴⁸. As a consequence, the Greek Copyright Act grants authors, and thus arrangers, the right to assign the administration and/or protection of their rights to a collecting society established exclusively to engage with the functions of administering and protecting all or part of the economic rights (articles 54§1, 55§2 and 55§1e), under either the fiduciary transfer of such economic rights for which protection is sought or grant of appropriate powers of attorney; both assignments should be established in writing and specify the suitable title of exploitation (article 54§3 and 55§1a), which however shall extend no longer than three years. If there is any ambiguity in the contract, the law indicates that all author's works are embraced (article 54§3), while, as we have mentioned above, royalties are also paid via collecting societies to performers, according to article 49.

For the music sector, we should refer to the collecting societies that manage copyrights or related rights in Greece, such as *A.E.P.I.* and *AFTODIAHIRISSI* for composers and lyricists, *E.M.S.E.* for composers (and producers of sound recordings)⁴⁹, *APPOLON* for musicians, *GRAMMO* for producers of sound recordings and *ERATO* for singers and performers, which pay the proportional royalties to authors they represent. What is more, after the enactment of Law 3905/2010⁵⁰, *GRAMMO*, *ERATO* and *APOLLON* founded a single non-for profit organization – *G.E.A.*⁵¹ – that deals with the collective management of copyright and related rights regarding producers, singers and musicians; at the same time, *G.E.A.* constitutes the sole responsible body that negotiates and agrees the remuneration for the related

⁴⁸ Pierrina Koriatopoulou-Aggeli & Charis Tsigkou (2008), *op.cit.*, page 353.

⁴⁹ For *A.E.P.I.* and *E.M.S.E.*, see Sokratis Provatas and Mania Tsoumita (2007), *op.cit.* pages 117 and 119.

⁵⁰ Law 3905/2010 for the enhancement and development of cinematographic art and other provisions, available in http://www.wipo.int/wipolex/en/text.jsp?file_id=227233 [last accessed 19/06/2017].

⁵¹ Number in the Official Gazette: 3245/30.12.2011.

rights, raises the relevant claims for payment, carries out any judicial or extrajudicial action and collects payment for the related rights of users⁵².

3. Conclusions

In conclusion, we could argue thus that Greek Copyright Act seems to grant strict, but rather flexible protection to musical arrangements, while being in compliance with its international and European legal basis and quite anthropocentric to its scope of application. Arranger's status is clearly established, while his particular talents are steadily appreciated and profits may derive from his contribution, while the legal umbrella for related rights and the way they are managed in Greece may defend all aspects this composition includes. In addition, due to the European vigilance, the present protection will probably extent its width of application in order not only to keep up with the demands of modern society, but mainly to safeguard its essence against the threat of international piracy.

However, we should also lay particular emphasis on the lack of clarification on what originality represents in the Greek Copyright regime, which may challenge such protection, especially for this kind of musical creation. At this level, both legal and musicological expertise should share an equal appraisal when a court is seized, in order to avoid further imbroglios. Fortunately, practice has already paved the way towards the right direction⁵³ and gives us the opportunity to highlight for once more the meaningful role the arranger plays within the music industry and perhaps to the real substance of the Hellenic Culture in general.

⁵² For further information, please visit:

<http://www.geamusic.gr/about9143.html?lang=gr&contentid=1&title=%CE%93%CE%BD%CF%89%CF%81%CE%AF%CF%83%CF%84%CE%B5%20%CF%84%CE%BF%CE%BD%20GEA>
[last accessed on 19/06/2017].

⁵³ A recent case that set a precedent for the Greek music sector was *A.E.P.I. vs The Association of Friends of Music of Aridaia* in 2010, where the musicological arguments established the existing differentiation between a mere reproduction of a piece and an actual musical arrangement.

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