The Copyright in Albania and its Legal Protection under National Law

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Abstract
It is a fact that the entire history of existence and development of human society has been founded on products of intellectual creativity of the human mind, which have been used to solve different problems of the time. We all have witnessed how the human imagination in the world has made possible the development in the field of science, technology and especially in Arts. Scientific innovations and the artistic activities, such as the music, painting or literature are created by individuals who have the ability to see and to express things in new and innovative ways. Intellectual property is a legal term that refers to the special protection, reserved by the law to the product shaped by human ideas, such as scientific and technological inventions or the artistic works. First of all, the intellectual property is considered a non-material asset that can be sold, bought, exchanged, licensed, etc., as well as any other property. On the other hand, it is considered as a personal exclusive right of the owner. Under intellectual property laws, the owner of intellectual property is granted the right to stop any infringement, unauthorized intervention or activities in relation to his property. One of the most important intellectual property rights is the copyright, which is the object of study of this article. The Copyright and the related intellectual rights, specially provided by the domestic normative framework, constitute relatively new legal institutes to Albanian reality. The Copyright in Albania presents special features because on the one hand it’s facing a normative regulation which aspires to get closer to international standards, but in practice it’s facing an insufficient and ineffective protection by the competent state authorities.

Keywords: copyright, intellectual property, author’ rights, Albania.

INTRODUCTION

DEVELOPMENT OF COPYRIGHT, THE REALITY IN ALBANIA
If we look back to see where we have achieved and what approach we have described in the field of copyright, we will see that creativity in the fields of literature, music, fine arts and others were born much earlier than the right and legislation is created and adopted to adjust its defense. Copyright is a relatively new legal institute compared with known and regulated institutes since Roman law. Copyright is not recognized by the Roman law as a right to issue property profits

Only after the discovery of the press in the Middle Ages, when the intellectual works began to materialize and distribute for the first time, was born the idea of extracting material benefits, because in this period began to become evident even the income that arose in the publishing field, mainly of books and texts. Characteristic of this period was that the income derived from a work was not given to the authors or creators of these works, but publishers, librarians and owners of printing company. In the late eighteenth century, the authors became conscious regarding their property rights as a result of the combination of authorship with commercialization and for the first time copyright was recognized and regulated by law, in particular the right of authors and creators to attract material benefits from their creations. The development of modern

legislation on copyright was supported by legal efforts which were conditioned by commercial interests to take control of the publishing industry monopoly and the right manufacturing.

In England in 1710, came into force Statute of Anne\(^1\), which intended to restrict the prior rights of publishers in a number of years. This statute is one of the first full acts that gave the modern appearance to the legislation on copyright in the countries which practice the Common Law, but also in international practice in general. *So copyright as entirely personal non-property and property rights is designed at least in 1710 with judicial practices and laws aimed to create monopoly protection of copyright.* Nowadays, the legal regulation of copyright is not only an aspect of domestic law of each state, but it has taken international dimensions, becoming the object of normative regulation by international agreements between participating States in these treaties. Also in the framework of European Union law, copyright and rights related to it, has become part of its normative regulation, binding it to the Member States' legislation. In this context, Europe Union countries and those that are in the process of being part of the European family have carried as a liability or are in the process of implementation, the adaptation of national legal standards with the European Union in terms of copyright.

Legislation for the protection of copyright is the branch of a wider embodiment laws called Intellectual Property. The term *intellectual property* refers to commonly creations of the human mind. Intellectual property protects the interests of creators by giving them the right of ownership over their creations\(^2\). In the world, intellectual product as "the object that causes report copyright", is known later, by being compared with the recognition and regulation of other institutions of civil law. Despite the idea for "pecuniary benefit from the works of intellectual creativity" was born in the Middle Ages, only the late 18\(^{th}\) century\(^3\), for the first time, the copyright of its concrete benefits in terms of wealth, was recognized and remedied especially by law\(^4\).

The copyright is protected by international law for over 200 years. It provides the economic basis for the creation and distribution of musical, literary and artistic works, movies, computer programs and other forms of creative expression. Copyright protects human artistic integrity and culture. Nowadays, the legal regulation of copyright is not only an aspect of domestic law of each state, but it has taken international dimensions, thus becoming subject to regulation by the normative international agreement between states participating in these treaties\(^5\).

The Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by the Republic of Albania\(^6\), Article 1 of the Additional Protocol, provides that *every natural person or legal person is entitled to the peaceful enjoyment of his possessions*. The European Court of Human Rights, in its judicial practice, protects the copyright as a fundamental right, stating that the term "assets" includes intellectual products as literary and artistic works, trademarks, licenses etc\(^7\). In this context, even the Constitution of the Republic of Albania attaches a special importance to copyright, as it establishes the *freedom of creativity* as one of the constitutional rights and guarantees the protection of copyright\(^8\). This means that every person who is the subject of an establishment in any of the forms considered as intellectual work, not only has the right to freely exercise his creative, intellectual or artistic ability, but also to protect this right from any violation by other persons, making it either in the form of a copy, improper use, unauthorized reproduction etc\(^9\).

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\(^2\) Suela Zenelaj, “E drejta e autont ne Bashkimin Europian”. http://www.academia.edu/4037273/EdrejtateAutoritne BE.


\(^4\) Statute of Anne 1710 in Great Britain, which used to regulate the property aspect of copyright obtained from booksellers.


\(^8\) Article 58 of the Constitution of the Republic of Albania: “1. Freedom of artistic creation and scientific research, placing in use, as well as profit from their results are guaranteed for everyone. 2. Copyright is protected by law”.

I. DEVELOPMENT PHASES OF COPYRIGHT IN ALBANIA.

Historical development of the copyrights in Albania was followed in several main stages through which have passed the development of the state and law. These stages are:

1. The first stage - the regulation of copyright by the Civil Code of 1929, which is also one of the most comprehensive legal acts in this field. This Code, which referred to the contemporary western legislations, predicted copyright as one of the objects of the right of ownership. This right is sanctioned as copyright for inventors too over their works and inventions. The object of these rights was called intangible items.

2. The second stage - the regulation of copyright from 1955 to 1981. Article 58 of the General Part of the Civil Code approved by a special law\(^1\) sanctioned the protection of copyright as one of personal non-property rights\(^2\).

3. The third phase - the regulation of copyright after the collapse of the communist system and the establishment of political pluralism (after the year 1990 onwards). The Civil Code of 1981, spread its legal effects until 1992, with the approval of the law No.7564, dated 05.19.1992 "On copyright", constantly changing with other laws and completed with bylaws. During this phase, the Constitution of the Republic of Albania was approved, which establishes the freedom of creativity and ensures its protection\(^4\) as one of the constitutional rights. The entry into force of the Criminal Code belongs to this period, which in the treatment of Articles 148 and 149, considers criminal offense publishing the work of others under his own name, and non-authorized reproduction of other people's work. The 1992 law "On copyright" introduced new concepts and wider protection in this as delicate as important area.

4. The fourth stage - a very important moment for normative regulation of copyright marks the adoption of the lex specialis - the Law No.9380 dated 28.04.2005 "On copyright and other rights related to it", as amended. With the entry into force of this law and bylaws in its implementation, we may say that Albania has a more complete legal framework and somewhat similar to that of European countries in the field of copyright.

By focusing in several directions, it is noted that the law is more specific and brings the introduction of new elements. Thus, for the first time in law it is applicable the notion of contract, meaning "publishing contract" and "contract for musical and theatrical performances". By publishing contract\(^6\), the author passes to the publishers, towards a fee, the right of production, reproduction and distribution of work. While in the contract for musical and theatrical performances\(^7\), the holder of copyright or organizer of the show, carries over the right to perform in public the literary, dramatic, dramatic-musical, choreographic or pantomimes work. For the contracts to fulfill their effects, they are required to register with the relevant authorities, which in the new law would be called "Albanian Office of Copyright" (AOC). Only after registration and certification at this office, the contracts are valid.

Another provision that is the subject of numerous debates following the adoption of the new law, is the forecast to Article 51 paragraph 3 of Law where is sanctioned that: Any agreement for the transfer of property rights in the exclusive form is filed, registered and certified in the Albanian Office to Copyright. Similarly, an innovation of the new law is the forecast in

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1. Law No.2022, dated 02.04.1955.
2. More specifically, this article sanctioned the opportunity of the author to protect personal non-property and property rights if his name or nickname is affected by the copyright in general and others. The author may require the court's recognition of its right, the cessation of violation by other persons, or the restoration of copyright in his favor. If he had caused damage was entitled to seek the cause of the damage. Personal non-property rights were protected after the death of the author or their holders.
3. Prof.Asoc.Dr.Mariana Tutulani, Mariana Dedi, “Pronësia Intelektuale”, Tiranë, 2005, p.54
4. Referring to Article 58 of the Constitution which deals with constitutional recognition of the right to create and to be the author of a work.
5. Article 148 of the Penal Code provides that "The publication or use of totally or partially with its name of a literary, musical, artistic or scientific work that belongs to another, constitutes a criminal offense and is punishable by fine or imprisonment up to two years". Article 149 of the Penal Code provides that: "Reproduction in whole or in part of literary, musical, artistic or scientific work that belongs to another, or use them without the author's consent, when their personal and property rights thereof, constitutes punishable by a fine or imprisonment up to two years".
7. Ibid, Article 49
8. Ibid, Article 117.
Articles 95 and 96 of the concept of *database*, listing the author's exclusive rights in a database. In 1992 the law had no such treatment. For the first time it is treated by the law and broadcasting of satellite programs (satellite broadcasting), thus the authors find for the first time protection for these broadcasts.\(^1\)

The new law regulates the right of appeal against the violation of the exercise of the right of public performance of the work.\(^2\) So anyone who holds the right to exercise public performance of a work, has the right to ask the prefect of the district to prohibit any public performances, for which there are no documentary evidence proving the registration and certification by the Albanian Office Privacy Rights (Article 119/1). So the right-holder makes first complaint to the prefect that in this case constitutes the first link of appeal. After this, the prefect addresses for competences to the AOC confirming whether or not the claim of the party. After receiving an answer from AOC, the perfect allows or prevents the performance of the work. The decision is final and can be appealed to the judicial authorities.

II. TREATMENT OF THE CONSTITUENTS ELEMENTS OF COPYRIGHT, UNDER ALBANIAN LAW.

II.1. Circle of works entitled to protection as objects of copyright.

Intellectual property is traditionally divided into two main categories: *copyright* and *industrial property*. Industrial property itself is a broad category that includes several other sub-categories which vary from one country to another. In our country the integral sub-categories of the Industrial Property are: *inventions and utility models, trademarks, industrial designs and appellations of origin*.

The object of copyright is the *work*, which by copyright law is defined as: "Work is any original and intellectual materialized creation, which aims to have effects on human senses by taking a particular physical shape, despite the forms of expression". By this definition there are a few elements of being a work, as follows:

1. The work should be a creation that is characterized by *originality*, the totality of elements that make it distinct and evidentiary from any other creation or work done up to that point, regardless of whether it is original or derivative.
2. The work is an *intellectual creation*, which means it itself carries a minimum of creative value. This means, that the work is not only related with the entities which represent the intellectuals’ category, but can be prepared by anyone with any level of education and schooling.
3. The work should be in *materialized form*, in order to cause effects mainly on visual and auditory senses of the public.
4. The work should be not only in the material form, but also in a *physical form* as well, regardless of the form of expression. A creation that is not embedded in a physical or material handler, regardless of the form, appearance or function, it is not a work and does not enjoy such protection as such.\(^3\)

All of the above conditions or elements of the work must exist together cumulatively. The absence of even one of them makes the creation not being a work.

Copyright protects literary, artistic, journalistic and other works, which include: a) any original intellectual creation of this nature, regardless of its form of expression; b) any creation developed in the form of a work or a collection.\(^4\)

With *original work* we understand a creation which has not existed before, or even if it has existed before, it is presented in a new form with new elements that make it distinct from the previous establishment. Regarding the original works that are included in the objective of the copyright, the law "On copyright" sanctions the circle of works entitled its protection, presenting a list of products in the field of literature, art or science, creative work of human mind etc.\(^5\)

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\(^1\)Ibid, Article 100: "The public activity of broadcasting programs in radio or television, by satellite, in the Republic of Albania, based on the provisions of this law and other legal provisions in force".

\(^2\)Ibid, Article 119.


\(^4\)Ibid.

\(^5\)In Article 7 of Law No. 9380, dated 28.04.2005 "On copyright", as works which enjoy the protection of the law are considered: a) Literary and journalistic writings; b) Lectures, speeches and other works expressed orally; c) Religious prayers and sermons, which materialized
Alongside original works, the law provides and protects derivative works\(^1\). Derivative work means any intellectual creation, which derives from an original work by fulfilling the condition: without violating it. Such works are those which rely on a previous creation, but bear in itself a creative work, have selective nature and disposition, which makes these works have the same legal status as the original ones and their authors enjoy all rights of the author of an original work\(^2\). The law makes sure to define the distinct products or works that are not subject to copyright and do not enjoy the protection of this law\(^3\).

As mentioned above, to bear the copyright, whether for an original or derivative work, it is necessary that the production of intellectual work take concrete shape, to materialize in order to be perceived by others without the necessary publication of the work.

II.2. The subject of copyright.

The author is the person who creates the work, explained above and with this quality can be primarily a natural person\(^4\). Since work is the product of intellectual creativity, in the logic of the law, there is no age limit for having this quality, so the author can be any person with legal capacity, regardless of whether or not the capacity to operate. Not only this, but author may also be an adult person who is of age but by court is deprived or has limited capacity to act. In the quality of the author can be two or more natural persons (the case of co-authored\(^5\)) especially in manufacturing audio-visual works (songs, movies). In these cases, each of the co-authors will be the author for his creative work. It is an accepted practice that in special cases, in the quality of the author may also be a legal person (for audio-visual works, the author is the cinematographic company).

We can say that whenever there is an author, there is an authorship. Authorship is the legal relationship established between the natural person who has made the creative work and materialize it in a form and a work itself which is the result of his creativity. The authorship occurs at the time of creating the work or at the time when finding out who is the author of the work, without the need for any legal action.

By making the connection between the author and the owner of the work, the law provides that the copyrighter is the first owner of personal property and non-property rights that are related to his work. If we refer to the Law “On copyright” we will see that the right of ownership of a work is entitled to its author or owner to determine the fate of the work, pass the right of ownership of the work to another person, to dispose it, to sell it, import it, to provide rental for it etc.

The law provides that another special subject of copyright is also the publisher of the work. The publisher is the person who undertakes the publication of a work, making it available to the public the copies of the work, by the sale contract. The

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1 In Article 8 of Law No.9380, dated 28.04.2005 “On copyright and other rights related to it”, are listed the derivative works which include: 1) Translations; 2) Resetting or adjustments; 3) Illustrations; 4) Documentary creations; 5) Musical arrangements; 6) Any transformation of a literary, artistic or scientific, that is the product of creative work of the mind; 7) The summaries of works and contributions, which include: adjustments and disposition of creativity and folklore materials; 8) Database is a summary of independent works, information or other materials listed methodically and systematically which individually accessed by electronic or other means.

2 In Article 9 of Law No. 9380, dated 28.04.2005, provided kinds of works that are not subject to copyright, including: a) The ideas, theories, concepts, discoveries and inventions in a creative work, regardless of the way the making, explanation or expression; b) Official texts, legal nature, administrative, legislative, political and other relevant official translations; c) Official symbols of the state, organizations and public authorities, such as: arms, seal, flag, insignia, medallion, distinctive signs, medal; d) Means of payment; e) News and press information; f) Simple data and facts.

3 In Article 14 of Law No. 9380, dated 28.04.2005, treat in this way the co-authorship meaning: A joint work of a creative work of some authors in collaboration; Co-authorship by agreement between the parties or under the provisions of the Civil Code of the Republic of Albania; Copyright in a joint work which belongs to the authors, who agreed between them choose one of them as the main author, etc.
publisher connection with the author is made through a *contract of publication*, in which the author passes to the publisher, in exchange for a reward, the right of *reproduction* and *distribution* of the work. The publishing contract and the rights that have passed to the publishers are valid and effective only after registration and certification in Albanian Office for Copyright and end after the deadline for which was agreed in the contract or after all the published copies are completely delivered.

### III. THE CONTENT OF THE COPYRIGHT AND ITS PROTECTION BY ALBANIAN LEGISLATION

#### III.1. The contents of the copyright, according to the Albanian legal framework.

The content of copyright includes two very large and important groups’ rights, which are: (a) the personal non-property rights, otherwise referred to as moral rights and (b) property rights or otherwise referred to as the economic rights. In article 12 to article 18 of the law on copyright there are listed all property rights with its character, where we can mention:

1. **The exclusive right of exploitation** of his work in every *form* and *way*. The exclusive right means of personal right of copyright, excluding any other as its title. Use of the work means joy and its availability as well as the in material and non-material terms.
2. **The right of compensation** for each case and for each type of use of the work, authorized or not by himself.
3. The right to import the work in order to distribute it to the public.
4. The right to translate the work.
5. The right to adjust, collate, transform the work.
6. The right of the display or the declaration of the work before the public eye.
7. The right to communicate the work to the public by broadcasting or retransmission.
8. The right to broadcast the work to the public by cable or other means.

The author of a work also enjoys the personal non-property rights. These rights are inextricably linked with the author when he was alive, but even after his death. Only a part of their inheritance passes to the heirs of the author. And the right to the name, the appearance in public under a pseudonym, the co-authorship, is personal non-property rights that do not pass by inheritance. Personal non-property rights include:

1. The right to establish his name on the work or on any copy thereof;
2. The right to request that he is recognized as the author of a work;
3. The right to determine under whose name will his work be presented to the public;
4. The right to remain anonymous or to use a pseudonym.
5. The right to decide whether his work will be presented to the public, when will be presented, how will it be done, and the place where his / her work will be presented to the public for the first time;
6. The right to demand respect for the integrity of the work and to oppose any removal or change that affects his name and honor;

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3 Ibid, Article 5/b.
4 Ibid, Article 5/c.
5 Ibid, Article 5/d.
6 Ibid, Article 5/dh.
7 Ibid, Article 5/e.
8 Prof.Asoc.Dr.Mariana Tutulani- Semini, “E drejta e autorit në Shqipëri”, Tiranë 2009, p.129
7. The right to decide when the author draws work from publication or amend it, when to share the work in parts, even when partially or totally destroys it.

The broadness of understanding and interpretation of non-property rights of the author has been the subject of many judicial practice issues. Thus, the international jurisprudence has widely addressed the issue of moral rights of the author in the civil case, judged by the Supreme Court of India, "A.N.S vs. the Indian Government". In this issue they were identified and found protection moral rights, related to a mural drawn which was then destroyed by the government\(^1\). Even Albanian case law recognizes issues that had on focus the protection and restoration of property and non-property (moral) rights of the author. Mention here is the civil case "J.D vs. the "International Organization for Migration (IOM)\(^2\), with the object of restoring the copyright and economic damage compensation; case "Arba Editions" ltd. vs. "Albtelecom" shareholders with the object of compensation of the property and non-property damage; case "Afërdita Shijaku" vs. National Cultural Centre for Children Tirana and the Ministry of Economy, Trade and Energy\(^3\), with the object of cessation of violation of the copyright and material and moral compensation for the use of the property\(^4\), etc.

III.2 Author and his protection by the Albanian legislation.

According to the Albanian law for copyright does not appear to require anything other than the fact of creating the work, to be called its author and to enjoy the protection of copyright. The first paragraph of Article 1 of the Law provides that "This law protects works ... regardless of the form of expression ...". Likewise, the second paragraph of this article reinforces this idea when it states "The protection does not depend on the form or manner of expression ...". Under Albanian law, the person who has created a work gains protection by copyright from the moment of its creation. It is not necessary for the work be fixed in a touchable tool, nor is it necessary to have a notice to whom the copyright belongs and when it has started.

It should be noted that in some countries it is not enough just the fact of creating the work to legally protect the author. But, except of creating the work it should be fixed into a touchable expression. This is the case e.g. in the US and in England. In fact, it is thought that the condition of fixing the work in a touchable tool is important because, otherwise how can we prove that the work has existed before, that the author is you, and that it later, for example, is copied? How can you complain to the court when you have no material proof, or a document or record of your work? This will make it difficult to alleged copyright protection, since the only defense would be that with witnesses.

In the US, until 1989 when the US signed the Berne Convention, should be respected even some formalities, such as in the placement of a notice that the work is protected by copyright ("Copyright", or the authors right belongs to this or that person). Meanwhile, Albanian law as the law of a Member State of the Berne Convention responds to obligations covered by this convention, by does not require any kind of formality to protect the underlying copyright. So the lack of such notification in work ("copyright" belongs to the author) does not prevent a person from the protection of copyright. Normally, the author of the work and, therefore, the holder of the copyright, is the one whose name, normally, appears in the work as its author.

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\(^1\) The issue of talented sculptor, Amar Nath Sehgal who couturièr a mural. The mural was uncovered partly of the wall and the remains were stored. This was considered a violation of the honor and reputation of the artist. Based on Article 6 of the Berne Convention, Indian law codifies the concept of moral rights to protect copyright, in order to distract from his economic rights, to claim ownership of the work and prevent any deformation or modification to the work which would prejudice his honor and reputation. It is important to note, that if mural was completely destroyed, there would be likely, that Sehgal had received the same compensation, especially because of the large space of time between the removal of the mural and trial.http://www.wipo_magazine/en/2007/article_0001.

\(^2\) The decision of the College of High Civil Court No.1887, at the hearing on 26.11.2003 and 09.12.2003.

\(^3\) The decision No.125, dated 07.02.2001 of the Court of Appeals in Tirana and decision No.2312, dated 07.13.1999 of the Tirana District Court accepted lawsuit filed by "Arba Editions" ltd against "Albtelecom" shareholder with object of economic and non-economic compensation - the defendant has reproduced telephone cards that he sells them to the public, postcard images produced by the plaintiff, ie those works that according to him, the reproduction is prohibited.

\(^4\) Decision of Tirana District Court dated 11.11.2011 (civil case No. 894 Act); Afërdita Shijaku against the National Cultural Centre for Children Tirana and the Ministry of Economy, Trade and Energy; The obligation of the respondent Ministry of Economy and Energy and the Children's Cultural Centre to pay the plaintiff the value of ALL 3.39 million for infringement of copyright of the work Skultural Group "Flowers of life".
Copyright, according to the violation made, can be protected in the following ways:

a. **Protection in civil terms.** For breach of copyright, unless an agreement is reached between the parties, interested persons can ask the court to resolve the dispute in a civil trial. To judge whether there is a violation of copyright the following elements must be proven:

1) It must be proved that the work is one of those, which are **protected by copyright**, provided by law;

2) It must identify the right that has been violated, which can be considered part of the content of copyright and;

3) It must be proved that the plaintiff is the holder of that right. If the plaintiff is the author, then it is simple, because the author is presumed to be the first holder of all economic rights of the author. If the plaintiff is not the author, but the person whose rights are transferred, the court should require the license or the contract of alienation and see if it is exactly the violation of that right, having passed the license, or contract alienation (sale, donation, etc.). To legitimize the establishment of the claim, the plaintiff must be the owner of that right that is allegedly infringed, or the holder of the exclusive license for that right. The holder of a non-exclusive license may come to the court as a third party.

4) It must be proved that the use of the right of the defendants is illegal. Illegal use constitutes performing any action, which forms part of the author's economic rights, without first obtaining his consent. However, there are some uses, which, although carried out without the prior consent of the author does not constitute a violation of his rights. These restrictions are called economic rights of the author, for example, when the use of the right is from those uses which are permitted to the public, or when the term of protection of the work has already expired, and the work is in public possession. These types of uses allowed, but not illegal, are well defined in law.

Civil process can also be used to compensate in money the moral damage (non-property) that may have occurred to the author, when his honor and personality has been affected.

b. **Protection in administrative terms.** The state, through special administrative bodies can be invested mainly for the implementation of the regulatory framework imposed on Copyright, administratively. This intervention is realized through control inspectors of the Tax Police, for the collection of the rewards and establishing sanctions against persons who illegally use copyright.

So far there have been three acts that enable this: The Law No.8826, dated 05.11.2001 "On some amendments to the law No.7564, dated 05.19.1992 "On copyright"; Decision of the Council of Ministers No.309, dated 13.06.2000 "On the tariffs to be paid by the users of artistic property"; and an Instruction of the Ministry of Finance in the implementation of the above law. These acts create a system, under which control inspectors of the Tax Police check on the main artistic property users to see if they have entered into contracts with the author, or the author's society, if he has adhered such. If these users have contracts with copyright societies, then they have to pay those fees provided by the state. Pursuant to the Decision of the Council of Ministers No.309 / 2000, the Tax Police inspectors can impose penalties provided by the law against those entities that use the work of others without regard of the above contracts, or who do not pay bonuses provided from such contracts. Of course, against any penalty decision it is recognized the opportunity appeal in court. Moreover, the legal framework in force\(^1\), provides the buildup of a special inspectorate, which operates in accordance with the law of inspection\(^2\) and covers specifically the areas of copyright.

For the radios and televisions, in particular, it has become a public regulation of how they respect the copyright in the programs broadcast. Albanian legal framework for radio and television\(^3\), requires these entities to submit to the National Council of Radio and Television (NCRT) documentation proving that they have the right to broadcast the programs. This might be a document that proves that the program is produced by them or for which they have the right to broadcast, if the program is produced by third parties. If radio and TV stations broadcast programs that have not produced by them and who do not have contracts sale, donation or exchange, the NCRT with its own initiative, or upon appeal to other operators may

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\(^2\)Law No.10433, dated 16.06.2011, "On inspection of the Republic of Albania".

impose fines of 200,000 up to 1 million ALL. It can also shorten the time of the license up to 50%, or may remove the offender's license.

A special role in the protection of copyright in the administrative aspect it is played by Albanian Office for Copyright (AOC), a main institution, with the public legal person status, according to Minister of Tourism, Culture, Youth and Sports, headquartered in Tirana. AOC shall exercise its activity in pursuant to the Constitution, in Albanian legislation on copyright, in other legal provisions and regulations in force, and as well as in other conventions and international agreements, to which Albania is a party. AOC has as object of activity the supervision and monitoring of respect for the rights of authors and other rights related with entities (natural/legal entities, private or public) which are users of literary, artistic or scientific property. The law does not stipulate in detail the organization and functioning of this Office, but it predicts that "The status, the scope of activity, the internal organization ... as well as other issues related to the operation of the Office are approved by the Council of Ministers".

Regarding the comprehensive analysis on the current situation of legal order, in relation to copyright, we can say that the problem is evidenced in the effectiveness of normative acts (laws and regulations). Therefore, for the Albanian government come the task of finding legal means to achieve the purpose of the law in the field of legal regulation of copyright and its protection in the most dignified manner. Hence in the government's progress-report for the coming years, the planned activities for the advancement and enforcement of national strategy on Intellectual Property, are focused and organized in accordance with three main components:

- Harmonization of legislation.
- Strengthen of the institutional and administrative capacity
- Raising public awareness.

**c. Protection in penal terms.** Copyright is protected through the penal process as well. Penal punishment for violation of the economic and moral rights of the author is provided by the Penal Code. Thus, Article 149 of the Penal Code, in the protection of the personal property of the author provides a fine or imprisonment up to 2 years, for reproduction of the work that belongs to another or using it without the consent of the author. Likewise, Article 148 of the Penal Code comes in defense of author's moral right (non-material) to be recognized as the author of his work when predicts the punishment by fine or imprisonment up to 2 years for publishing or using its name under a work that belongs to another. Penal sanctions for violations of copyright are provided even by the law of copyright itself.

**CONCLUSION**

In the international context, the intellectual property initially was known simply as a moral right and then gained the status of an economic right of the intellectual property owner. In our legal system, the institution of copyright is relatively late and found only when Albania established democratic system after 90s. The 1992 Law "On copyright" introduced new concepts and broader protection in this important area. So, we can conclude that national legislation in this field, seen in historical comparative national plan, has made significant progress.

Currently, the applicable law is that of 2005 "On the right of the author and other rights related to it", as amended, which is considered a good law but not with the proper standard of implementation that deserves a candidate country for the European Union. This law has a clear aim to guarantee the protection of these rights, which include the rights arising from a creative activity, trading, manufacturing or any other activity of assessment, exploitation, use or alienation of literary,

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2. Information received from the Ministry of Integration, Directorate of Integration and Projects, 2012.
3. Law No.9380, dated 28.4.2005, "On copyright", article 125, "Penal Sanction": "If measures for seizure of vehicles, equipment or production facilities of this issue, it is decided as a result of performing an offense or an penal offense, the decision making body forwards the case to the prosecution authorities for the continuation of penal proceedings, in accordance with the provisions of the Criminal Procedure Code and other applicable provisions".
artistic, scientific work within the territory of the Republic of Albania. This law for the first time mentions the publication and musical show contracts, as it establishes for the first time the competent state authority - Albanian Office for the Protection of Copyright - despite that this does not regulate in detail the organization and functioning of this entity.

As is evidenced even by other researchers, formal legal standard for copyright in Albania is completed, while the implementation in practice of the law in this field is far from international standards.

Some suggestions for a more dignified defense to copyright would be:

- The increase of the authority and of the capacity of the Albanian Office for the Protection of Copyright, in order to be able to make the final administrative decisions and applicable to offenses in this field. One might suggest the creation of regional centers of the office for effective coverage of the territory.
- The preparation and the implementation of public awareness campaigns on intellectual property issues. Promoting public debate about current issues concerning the protection of intellectual property, especially from the perspective of international law and international business. The involvement of the media in cooperation at this stage appears to be a concrete and useful step to be realized.
- The promotion of the activities of various interest groups (including NGOs, business associations, chambers of commerce, businessmen, scholars, etc.) involved in the protection of intellectual property rights, by means of the discussion, exhibitions, lectures, etc.

Public support is a fundamental element for the success of initiatives to protect copyright. In this context, it is necessary not only that the state should protect intellectual property rights, but also for the general public to understand the consequences of violations of these rights.

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[18] Instruction of the Council of Ministers dated 25.01.1982 No.1 "On remuneration of authors, whose works are published abroad".


[24] www.top-channel.tv