# THE DURATION OF RIGHTS CONFERRED BY COPYRIGHT

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**Abstract**

*The duration of copyright protection has been a controversial issue. And yet never completed. It was and is the key issue of copyright, the same as are those concerning the recognition of their nature and content. If the first law to protect a new creation, gave the exclusive right* for *the author as long as a year, today its duration is, basically the* whole life *of the author's plus 70 years for the heirs. Some argue that it is unwise. Others that should not be as such at all.*

*In reality, the copyright in the widest sense of the term of copyright for the purposes of law complex that regulates the relations between the author with his work and of the relations between the authors and others on his work, this right never ceases. The oldest sculpture (Venus Wilfredo), paintings of Ardeche, Vezere and Altamira, even if you do not know who created them, will belong forever, not just in the consciousness of humanity as a whole, but also according to unwritten rules of law before the law was created by humans, to whose who created them. Even if you do not know who created them and say that they belong to the universal culture. As everyone's works that were created right after the rules of law were created by humans, but before the recognition of copyright by special laws, will belong forever to the universal culture as well.*

*As for the right created by and after recognizing and codifying copyright notice that he is trying to harmonize the interests of authors and those of the public and to make peace between the author with his audience in a more general interest, and the solution for reconciliation and / or harmonization was limiting the length of some of the attributes of copyright. A solution that makes copyright law without a right to have the benefits after a while, that every owner has of his property. Furthermore, the link between the author and his work remains eternal because none other than the author may not claim ever to be the author of and has a copyright on that work. But neither the author can claim ever to have a real ownership of the work that still belongs to him and him only. Copyright proves to be as different from any other category of rights.*

**Keywords:** *Exclusive right, right limited by time, ownership, monopoly operating.*

## 1. Time limitation of the rights of the author

Referring to the duration of protection of works under copyright disputes (political, legal, doctrinal and jurisprudential) which were long, even after it was admitted that the economic rights are the first to be recognized whereas the moral ones are due much later for the authors. Moral rights, within the protection system of the Berne Convention, we believe, rightly, honestly, that precede the ownership in their existence conditional on the property. But after the economic rights were afforded to the authors, they were severely limited in time, and the opposition against extending the duration of their protection continues to manifest today. And it is noteworthy that during the nineteenth century, personal property rights were

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afforded to the authors, were resumed and disputes were made on the nature of copyright and qualification copyright as ownership was brought to the date of merchantability rights, the growing **interest including creators**, to patrimonial aspect of copyright, moral rights passing from the point of view of immediate interest of authors in the background.

Arguments against the recognition of copyright have always existed since ancient times, the movement **copyleft** was only apparently new, because nowadays it does not make opposition known to history only as to the means and arguments used not in its substance, which it's the same. The Pirate Party today is manifested even in the parliaments of Western countries which cannot be said to be opponents of copyright. The Pirate Party today is manifested even in the parliaments of Western countries which cannot be said to be opponents of **copyright**[1]. More fair to say that the movement copy left is new only in the designation adopted recently by opponents of copyright, i.e. the position of quasi-majority, which recognizes the right of authors in their own works, to be suggestive and impact greater public debate it causes.

In fact, copyright has enemies since ancient times. Recall that both Plato and Confucius believed that people are born with all her ideas, ideas that come to us from the past and not our own, and our knowledge is a gift of the gods, so we cannot claim any rights over them. Francoise Chaudenson tells us that Socrates and Plato „*artists do not deserve any special consideration because beauty that expressed in their work, was outside and dictated by a divine force, they are merely messengers rather than" creators "nor the owners of their work. Socrates, even "hunts" country poets because they were a threat to the future of the city, as later church fathers condemn the seductions of art and will delay and hinder the city enriching divine."*[2]

Aristotle, a disciple of Plato, was also influenced by the design of his master, of creations and creators, and its concepts, which were the basis of education in Europe for hundreds of years, including the most famous university of the Middle Ages, that of Padova, marked course all those who were formed at the school of Aristotle. For the ancient Greeks, Socrates, Plato and Aristotle, artistic creation were nothing more than an imitation of nature, or an imitation of imitation. In ancient Greece, the man could not claim to be the creator, the actual meaning of the term, since the ideas, inspiration and words were transmitted artists gods or nine muses, and art imitates nature only. And during the Dark Ages, no matter how genius, he had, he could claim creator, because it clashed with the Church, which claim to be the creator could only be blasphemy of the author and his work were purified by fire.

Some consider that the rights belong to the author as long as the work has not been made public. With the disclosure of her work, it would become of all. Not true! Because if it is true that after being informed, their work has its own destiny and can survive its own author (it happens to all valuable works), one cannot attribute the authorship of the work to another. And it could not do it even when the copyright was not protected by special laws, but with the risk of becoming the target of public opprobrium.

[1] Pirates Party was founded in Sweden in 2006 by an entrepreneur in IT. European Parliament elections in 2009 won 7.13% of votes and a lawmaker. Conf. Mihăiescu Marius Party Who is it and what do you aim at International Hot News.ro, June 8th

[2] Chaudenson Francoise, „A qui appartient l`oeuvre d`art", Armand Colin, 2007, p. 19.

Others argue that if copyright is a property right and that ownership is flexible enough to cover the rights of creators under its umbrella, so property laws offer solutions to all issues raised by copyright. What is not true or is not entirely true, the argument most solid in support of that view is that in almost all countries copyright is governed by special laws, which derogate from the common law of goods and people.

Between theorists that copyright is proprietary, some argue that if it is his nature, he should be unlimited in time, to be perpetual, to convey a whole to the heirs. Which, again, does not happen in reality. Heirs come into possession of their property the author of all the rights and obligations of an economic nature, but they do not acquire by inheritance and the author of the work of de cujus. Cannot substitute for the moral rights of the cujus, even if they are transmitted and exercise (note, not rights!) Some moral rights, namely, the right of disclosure of the work, the right to demand recognition of authorship and right to inviolability of the work. As you know, do not transmit any exercise of the right to a name, nor the right of withdrawal (art. 11 of Law no. 8/1996).

Qualification copyright as owned, although questionable because it cannot actually explain moral rights as part of a proprietary, limited duration and failure to transmit their doctrine is the conception majority today.

We believe, however, that the Belgian Edmond Picard, proposing in 1874 to recognize a category autonomous "intellectual rights", along with **1) the rights attaching to those (state and capacity), 2) the obligations and 3) real rights w**as right and that the proposal brought better solutions to many problems and which better qualifications proposed in the doctrine through the ages, including that of ownership, do not. But attached so much a division (multimillenary) rights in the three traditional categories, the legal world does not seem willing to accept such a revolution in the law. As a revolution would be for the recognition of this new category of **"intellectual rights".** But if such a revolution was not possible in the nineteenth century, which was a century more open to new and revolutionary in many fields, including law, today, when the theory of magnetic private law seems to have swept the world legal, such a solution seems almost impossible.

We believe, however, that the solution of recognition category to the intellectual property as a distinct category of rights exist ***de facto***, because the theory of monistic the civil law did not involve intellectual property rights, they continue to be governed by special laws and rules that deviate from the rules of common law of persons, goods, obligations, contracts, but refuse to admit them as a distinct category of rights from excessive conservatism.

The issue of the possible temporal limitation of copyright if the copyright is limited in time, it is also questionable. Because, as I said, the right of copyright is, in fact, forever argued. The work bests forever and this happens not only for works that fall into the public domain and may be used freely by anyone, but for works that fall into oblivion and are after a while, resuscitated. If it is well known works of the ancients. But also of many other works, including unpublished works by the author during their life and who they belong, not to publish them

As far as resuscitated scientific works are concerned, things are more complicated, because Directive (EC) no. 116 of 12 December 2006 on the term of protection of copyright and related rights in art. 5 states that "Member States may protect critical and scientific publications of public domain works. The maximum term of protection of

such rights shall be 30 years from the time the edition was published legally for the first time."

Limited in time is **not the right of copyright**, but the possibility that the author and his successor to collect things of property from work. As regards non-material things of its recognition as an author, opera notoriety earned it and that may increase after cessation of life - take the case of artists - they will continue to exist after the termination of life of the author.

A property right without **Fructus** for the whole time the work is used, however, is a property right? Unfortunately, that German Josef Kohler, who is less famous in intellectual property law than Edmond Picard, embraced warmly and supported the proposal Belgian, had the effect of formal recognition of new categories of rights: that of intellectual rights.

We therefore have a copyright qualified majority doctrine as ownership, but it is a limited time into an asset, non-transferable and really unable to explain the moral rights covered by the right of the author and is everywhere regulated by special laws. A complex as special, different from any other category of rights.

Romanian legislator avoided, however, to qualify for copyright, confining itself to recognize only attribute exclusive! Legislator hesitation in affirming unequivocal nature of copyright must have an explanation and I think one of them has its origins in the term of protection just right. Or rights. If it would have qualified as ownership in the common law sense, it would not have limited time and would have to admit that is transmitted as a whole. This never happens in reality.

And temporary exclusive monopoly right to use a recognized work in favor of the author, followed by work fall into the public domain when it can be used freely by anyone, deal in some way with the interests of the public author. But affect the substance of the alleged ownership of the author. How to explain in rational terms that copyright is a property right but after some time you have no fructus nor usus nor abusus?! **On the other hand we must admit that the first regulations of intellectual property rights until today, during right (s) copyright was limited.** Or rather**, apparently restricted or limited in some attributes his,** because nobody has ever said that the work fallen into the public domain, the work for which expired term of protection of rights became *res nullius* and that any work anyone can be appropriated by anyone.

## 2. The Duration of Rights according to Sybaritic Law

According to the information that we provide Athenaios of Alexandria in his work entitled "**Deipnosophistai"**[3], 600 years before Christ in ancient Greek colony

Sybaris in Italy has adopted a law that "If an innkeeper and chef invent a dish of exceptional quality, it will be his privilege and no one else will be able to adopt to use before one year from the date of achieving it by the first inventor and this in order to encourage others to excel by such inventions"[4]In a translation of BTD Boreschievici the same text and demonstrates once again that translations can be original without " betraying " the translated text reads: " and if any baker or

[3] In Romanian language work has been translated as the "Athenaios - Feast wise" by Nicholas Barbu, Minerva, 1978.

[4] Foyer Jean, Vivant Michel, Le droit des brevets, Presses Universitaires de France, p. 5-11.

chef will invent a dish particular and particularly tasty (excellent ? ), no artist (emphasis ours, Ed) will not be entitled to own things resulting from the preparation of this kind, over this period ( one year, note) and this to make others to work to excel in such pursuits. "[5]

### 3. The duration of the rights and privileges granted to publishers

Duration of rights and privileges granted to publisher's privileges royal princely court granted were those that preceded rights afforded to publishers and from which they were born copyright, ie monopoly author's exclusive right to dispose of his work. But as it is, in a sense, also a privilege

Library privileges were granted exclusive rights booksellers and theater companies for the reproduction and dissemination of books, or for their representation and were granted the pleasure of those who have the right to grant. The privileges granted to booksellers fulfill three functions: i) the possibility offered monarchs control prints, censorship already having tradition before drawing up a list of books prohibited by the Catholic Church in 1559 and brought the royal treasury income; ii) provide booksellers agreed exclusive right of reproduction and dissemination of works and obviously a profit; iii) recognizing implicitly in favor of some specific rights of the author, because no book could not be published without authorization and no authorization was given for a card belonging to another.

We must distinguish, however, between privilege Booksellers (include here and theater companies) for reproduction, dissemination and / or representation right or obligation works and authors to give their works manuscripts such privileged. The author was forced to concede only work if he wanted it to be reproduced, distributed and / or edited to obtain benefits from it and the assignment can be made only in favor of those who obtained and enjoyed privileges bookstore. Privilege struck, therefore, indirectly the author, because the privilege does not create a right of ownership over the work, but was effective right into the hands of him who purchase from the author and obtained a privilege reproduction, distribution or editing the work of the king. Transfer of rights to work by booksellers and librarians' royal privilege granted for exploitation of the work was to lose any connection between the author and his work, once the rights were assigned the privilege obtained. The author was not associated in any way in the exploitation of the work and had no control over it, even on later called moral rights, as soon as allowed by its first broadcast.

The privileges were granted, usually booksellers and libraries defended these privileges fighting for them both among themselves and with the authorities and authors of works. Such privileges were granted sometimes and others, as a reward for services to the Crown, and later, and authors. But it is worth noting that when the privileges were granted to persons other than some booksellers (third party or authors), they could not themselves exploit the work, being forced to cede exploitation of the work of librarians, because they were the only ones who can truly exercise the privilege.

The first known library privileges are granted in 1495, in Venice, for an edition of the works of Aristotle, followed in France in 1507 and 1508, the privileges of Louis XII for an edition of the Epistles of St. Paul,

[5] Boreschievici Bogdan D. T., Interferențe, Vol. II, Fragments of the history of the protection of industrial property, OSIM Publishing House, 2009, p. 11

respectively for works of St. Bruno. Privileges for authors are also encountered. Thus, in 1516 a privilege is granted on request, Guillaume Michel Tours for his book "The forest of conscience" (Forest of consciousness)and another privilege granted in 1517 by Jean de Celaya[6] for philosophical work ( "insoluble")[7], these first author privileges being granted but exceptionally[8]. Another privilege in favor of an author was granted to reward the author for services to the Crown. Thus, Pierre de Ronsard[9], poet Court's highly praised by King Charles IX and his mother, Catherine de Medici for advice given in delicate problem at the time, the Huguenots enjoys a huge appreciation from King for which he received the right to stand for King and privilege to print work. Privilege that another King (Louis XIII) and refused one of the three great playwrights of France, Pierre Corneille[10] in 1643.

In England, who have a tradition in granting monopoly for inventions by a law (monopolies ) adopted in 1623/1624, in 1662 it adopted a law license, under which publishers, organized since 1556 in company stationery, printed enjoyed monopolies, so the authors were compelled to call on them to publish works. And he could not only under the conditions of stationery and a work once transferred to a publisher, it became virtually his property.

Granted at the pleasure of the king's privileges were usually temporary (lettres patentes), and vary the conditions during which they were granted and did not involve a systematic exploitation of the work. One and the same work may be subject to two privileges: one for a bookseller for reproduction and dissemination granted to other theater companies for representation.

Beginning of the end of privileges was to come to England in 1709 with the adoption of state Queen Anna, the first copyright law that will be recognized for authors. But it will still take 80 years until the privileges are abolished in France and the history for almost three centuries of their ends. Period the Parisians and the provincial libraries have faced each other for obtaining privileges and ended defend themselves against each other with arguments in favor of authors.

Louis lawyer d`Hericourt, for instance, appeared in bookstores in the province anul1725 on their dispute with Parisian bookstores because they're not receiving "privileges bookstore" actually advocate in favor of authors, stating that a manuscript is a good own it, because it is the fruit of his labor and therefore he should be free to dispose of his work according to his will to acquire honors and means to cover its needs and even the people that is united by ties family, friendship or gratitude. If an author is considered the owner and therefore sole master of the work, only he and those who are may validly assign another these rights, the king, having no right in the work as long as its author is alive or represented by his heirs and cannot send anyone a favor without the consent of privilege which the work

[6] Jean (Juan) of Celaya (1490-1558), mathematician, physicist, philosopher, cosmologist and Spanish theologian. He studied in Valencia and Paris. He was a professor of theology at the University of Valencia and rector of the university.

[7] L`origine of l`imprimerie of Paris. Disertation historique et critique on https://books.google.ro.

[8] Claude Colombet, Propriété littéraire et Artistique et droits voisins, Dalloz, 1997 Ed. 8, p. 2.

[9] Pierre de Ronsard (1524-1585), created a school in Paris poetic contemporaries called it "Pleiades master Ronsard ".

[10] Pierre Corneille (1606-1684), nicknamed „the founder of French tragedy ", along with Moliere and Racine.

belongs[11]. In turn, the Parisian booksellers' authors have claimed ownership over their work and that libraries could not claim any rights over the works entrusted to the authors than their assignees under quality.

Following this trial, the Council Regal amended policy privileges process will at a fair distribution of work between libraries Parisians and in the provinces, but the authors of works important, however, was the assertion thesis their ownership of the work, even after it had been "sold" to be printed and sold, and that King "did not remain insensitive to the demonstration of force booksellers Parisians and began to consider the interests of authors."[12]

In 1761, after a conflict of interest between community of booksellers and grandchildren of La Fontaine, the rights to his work, he admitted the idea that copyright is a property and therefore is subject to common law, the process heir's writer demanding and obtaining a personal privilege to publish the "fables".

An edict of December 24th, 1762 regulating for the first time how to grant them the privilege of limited duration to 15 years.

The Council Royal family returned in 1777 the Fenelon's the privilege previously granted printers for works belonging to this family, on the ground that granting further privileges for booksellers cannot be made without the consent of the heirs of the author's work.

On 30th August 1777 the same Council adopted the suggestion of King Louis XVI, a total of six resolutions, constituting, according to Pouillet, a genuine code of literary property. In the preamble, it reproduces a letter from King Louis XVI of September 6, 1776 and it enshrines the right booksellers and authors, making a clear distinction between the two categories of rights. In this "Code" states the principle that the author is entitled to claim, for himself and his heirs, perpetuity privilege to edit and sell works, or event that privilege was granted to a publisher, this assignment may not exceed life of the author[13]. As for the booksellers, "Code" states that "given their favor must be proportionate to the costs advanced and the importance of the work done."[14]

In 1788, in an "Essay on Privileges," Abbe Sieyes put the issue of crime authors to distinguish between the responsibility which belongs to the authors, printers and booksellers (publishers). But the author stops and intellectual property that needed to limit the privileges and advocates free flow of books

On August 4th, 1789 French revolutionaries declared freedom of trade and industry in France, which was tantamount to the abolition of privileges. If the abolition of privileges bookstore was a result of the actions creators times due to the political, economic and social that made the French Revolution of 1789 burst, it is hard to say.

### 4. The duration of copyright in the first adopted regulations

Duration of copyright in the first regulations adopted idea that authors' rights must be limited in time is made in the first draft of copyright made by a French lawyer who in 1586 won the judges in Paris cancel a privilege bookstore for work (annotating the works of Seneca), made by Marc

[11] André Bertrand, „Le droit d'auteur et les droits Voisins ", Ed. Dalloz, 1999, second édition, p. 289, p. 3.
[12] Christel Simler, Droit d`auteur et droit commun des biens, LexisNexis Litec, 2010, p. 30.
[13] Colombet Claude op. cit., p. 3.
[14] Lucas Andre, Lucas Henri-Jacques, Lucas Schloetter Agnes Traité de propriété littéraire et artistique, 4éditions, Litec, 2012, p. 9.

Antoine Muret. At trial, lawyer Simon Marion, Baron Druy a said "people, one another, out of instinct, recognized each of them, the quality of master what they have invented or composed, and after God's example, he belongs heaven and earth, day and night, author of a book is its master and as such may possess and freely dispose of it just as you have a slave, you can emancipate, giving his freedom for a price, or simply just freeing him without reservation, through a kind of patronage under which none but the author cannot reproduce the book only after a certain time"[15]. As you can see, the noble lawyer rule for limited rights since the authors admit that after a certain time, the work may be reproduced by anyone.

In England, in 1662 it adopted a law license, its beneficiaries being publishers organized into "honorable company stationery and newspaper publishers", better known as the "company stationery" effects on but directly and authors of works. England meet privileges licenses role in continental Europe, meaning that publishers were the only ones able to pursue the activity of reproduction and dissemination of works based on licenses granted. Licenses as well as privileges in continental Europe did not enjoy but all publishers, and the authors, they were at the discretion of the editors if they would publish their work because according to the rules of the Company, the authors were denied the publication of books by themselves. Law displeased publishers who had no access to licenses and the authors, so torn by internal disputes and disputes with the authors, the Company ended to address Parliament to demand a new law. In 1695, Parliament abandoned the company, refusing to extend the licensing law, and in 1709 adopted its first modern copyright law, known as the Statute of Queen Anna.[16]

Both the Explanatory Memorandum (preamble to the law) and in the body of law referred to "copy of a book" as a recognizable form of property, equal rights with other tangible property.

As proposed debates, the law did not contain a limitation on the term of protection of the rights of creators, referring to copyright explicitly as a right of authors and provide that printing books without agreement of the authors, who own these books or writings, as a product of lessons and their work, or people whom the authors have transferred these rights is not only a great deterrent to learning in general, learning should receive feedback and encouragement in all civilized nations, but also a violation of the rights of owners the right of these books and writings. As adopted, but the idea was abandoned perpetual, exclusive right of authors on their work and free to print is limited temporal recognized right for authors as having a monopoly nature.

Duration of protection has been set for the books that would be written to 14 years, extendable once for a further period of 14 and for those under 21 years old pattern, the duration of the exclusive right was extended by King George III century, in 1767, at age 28. In 1734 the English painter William Hogarth (painter of the Royal Court) wins a lawsuit against a person who illicitly reproduce his creations, the outcome of the origin of a law judges "l`Engraving Act", also known as the "law of Hogarth ", adopted in 1736, which gave artists a

[15] Lucas Andre and staff, op. cit. p. 6.

[16] The name under which it was adopted is "An Act for the Encouragement of Learning, by vesting the Copies of Printed Books in the Authors or purchasers of such Copies, during the Times the already mentioned " title later reduced to that of " Law for the encouragement of learned men to compose and write useful books ". The law is known in the literature as the "Queen Anna Statute" .

monopoly of exploitation of their engravings for a period of 14 years.

The law also established the formality of deposit protection law as a condition providing that the author could act against those who violated his rights only if the book title was present in the register Stationery Company prior to publication. Also, the law and limiting import prices allowed books and authors' books "classics" originally published in another country. Those who violated the copyright of the authors had to pay one penny for each page of the book. Half of the fine went to the author, the other half in the coffers of the Crown, and the reproduction was destroyed.

Revolutionary France, the laws devoted to literary property that were taken during the period 1791-1793, from the beginning this was all life duration authors and 5 years post mortem auctoris.

In Germany, a special regulation is passed in Prussia until 1837 by the author of a law that enjoys a protection for 10 years since the opera, prolonged duration in 1845 to 30 years.

In the US, where copyright will evolve differently from European law, a law passed in 1780 recognized the author's right to use in his work during 14 years (extended in 1831 to 20 years) with the possibility of extension for another 14, if the author, wife or children were living at the expiration of the first period.

Media law adopted on April 13, 1862 in Romania, on the 11th articles dedicated to property literary provide that authors will "enjoy throughout their lifetime as a property of their exclusive right to reproduce and sell their works in all Principality, or move them to another this property, making it the right recognized by the laws in being "right and transferable to successors over 10 years. Literary and Artistic Property Law of 1923, art. 38 provided, however, that the term of copyright in a literary and artistic works published as the author's lifelong author and shall expire fifty years after the author's death, and in the case of works published anonymously or pseudonym, duration of rights is 50 years from publication.

**5. The duration of protection of rights in regulating the Berne Convention of 1886**

The object of protection governed by the Convention is "all work in the literary, scientific and artistic, whatever the mode or form of expression such as books, pamphlets and other writings; conferences, speeches, sermons and other works of the same nature; dramatic or dramatic-musical works; cinematographic works and mimed; musical compositions with or without words; cinematographic works, which they are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving, lithography; photographic works to which they are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps of location; plans, sketches and works relating to geography, topography, architecture or science ", the list is exhaustive, however.

The purpose of the Berne Convention, as set out in the preamble, is to protect in an effective and as evenly as possible the rights of authors to their works (what means and duration of protection of rights) and the means of achieving that objective are the three rules basic Convention:

1) by applying the rule of national treatment or assimilation, on the basis of which a foreigner must enjoy the same rights that are recognized nationality. This does not mean that foreigners will enjoy exactly the same rights as nationals of their

rights depending determine the law applicable to their works. This law is determined by applying the rules of conflict of laws.

2) minimum protection rule, which requires that member countries creators should enjoy at least the rights under the Convention. So Convention affording to authors moral right to authorship and the right to integrity of his work and economic rights of translation, reproduction, broadcasting, recitation, adaptation and distribution of works adapted and sets the minimum duration of moral rights and patrimonial leaving Member States to establish other terms of protection for different categories of works.

3) automatic protection rule, which is supposed to enjoy protection by copyright are required and cannot be imposed formalities.

In duration Rights Convention, art. 7 provides that "the term of protection granted by this Convention contains life of the author and 50 years after his death," which is the general rule for the duration of copyright protection.

In the case of cinematographic works, the term of protection may be established by Member States at 50 years from the date on which it was made accessible to the public or, failing that, 50 years from realization.

For anonymous or pseudonymous works the duration of protection shall expire 50 years after the work was lawfully made available to the public. When the pseudonym adopted by the author leaves no doubt as to his identity, but the duration of protection is applicable for authors identified. If the author of an anonymous or pseudonymous discloses his identity during the period of protection as a work anonymously or under a pseudonym, the patent is jointly applicable. Union countries are not required to protect anonymous or pseudonymous works whose author is presumed dead, in all likelihood, 50 years.

In the cinematographic was booked laws of EU countries the right to regulate the duration of their protection and that of works of applied art, protected as artistic works, establishing however that term may not be less than a period of 25 years, counted from the realization of such works.

The duration of protection subsequent death of the author and other limits begin to run from the author's death or of the event referred to by those paragraphs, but during these periods is calculated only with effect from 1 January of the year following the death or the event had in sight.

### 6. The duration of related rights protection system of the Rome Convention of 1961 on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations[17] and the Geneva Convention of 1971 on Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms.[18]

The Berne Convention, though it does not limit the scope of protected works in the categories set out therein (illustrative), does not refer to rights related to copyright, i.e. the rights of performers for his own performance, the rights of record producers sound, for its own records, the rights of producers of audiovisual recordings for their own recordings and the rights of the broadcasting organizations of their own broadcasts and service programs. Moreover, the rights of those listed above and their creations are not mentioned in art.

[17] Romania joined the Rome Convention by Law no. 76/1998.
[18] Romania has ratified the Geneva Convention by Law no. 78/1998.

7 and 8 („subject to copyright") of Law no. 8/1996, but only in Title II of the law (Art. 92-1224) but their vocation protection was affirmed19 in our law and under the sway of Decree 321/1956, i.e. before the adoption of the Rome Convention, which lacked any reference thereto.

For the categories of authors and producers envisaged by the Rome Convention (performers, producers of phonograms and broadcasting organizations), duration of protection shall be at least 20 years counted from the end of the year he has been cast for phonograms and Performances attached to them late in the incident execution executions are not fixed in a phonogram and end of the year occurred issuing the broadcasts (art. 14 of the Rome Convention and art. 4 of Geneva Convention).

The duration of protection provided by these Conventions is the minimum length that should be recognized by the Member States of the two conventions, Member having, as in the case of the Berne Convention, the possibility to establish higher limits of protection.

Some EU Member States have introduced a term of fifty years after lawful publication or communication or after legal publication.

**7. The term of protection of copyright and certain related rights by Directive (EC) no. 116 of 12th December 2006**

The duration of protection provided by the three international conventions is minimal, the states having the possibility of establishing longer periods of time.

The minimum duration of the Berne Convention was intended to protect the author and the first two generations of descendants, but it turned out to be insufficient in terms of extending the average lifespan in the European Union countries.

On the other hand, some EU Member States have given duration's greater time than fifty years after the author's death in order to offset the effects of the world wars on the exploitation of works.

Other countries have introduced, for the minimum period related rights protection was established by the Rome Convention (1961) and Geneva (1971), term of protection of 50 years.

These factual circumstances to which were added goals constantly pursued those not to impede the free movement of goods and freedom to provide services and distort competition in the common market and ensure a high level of protection of copyright and related rights, were the reasons why the European Parliament and Council decided, by Directive (EC) no. 116 of 27 December 2006[20] the term of protection of copyright and related rights.

The law was confined to harmonization and regulation of the term of protection of economic rights, excluding from the scope of its regulatory explicit moral rights (in Recital (20) and Article 9)

In Romania the time of protection of copyright and related rights is in accordance with the rules set out by the Directive, so it does not require their own separate analysis. An observation is yet to be done. In art. 5 provides that "Member States may protect critical and scientific publications of public domain works. Maximum term of

[19] Cărpenaru D. Stanciu, Civil Law. Rights to intellectual creation, Bucharest University, 1971, p. 40: "In the absence of a legal text expressly interpretation, to the extent that it is a work of creation, can be protected as an object of copyright by adding them to the enumeration done art. 9 of Decree no. 321/1956 ".

[20] The Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights is a codified version of Directive 93/98 / EEC of 29 October 1993.

protection of such rights shall be 30 years from the time the edition was published legally for the first time ", or such provision is not in Romanian copyright law. But as it is clear from the quoted text of the Directive, it does not create an obligation to protect critical and scientific publications of works in the public domain, but a college.

### 8. How to justify the limited duration of protection of economic rights

Limiting the term of protection of rights of the author seems to be the result of a compromise: the author are recognized exclusive rights, but limited duration to ensure reward his work creative and to ensure access public to his work, which becomes part of the cultural heritage. Some have addressed the issue pragmatically thinking things of general interest to the public of its right to knowledge that could become illusory in the absence of a law limiting the duration of protection.

And one can argue that this realm, Napoleon Bonaparte won a war, because he is the one who opposed the recognition of a property right perpetual and imposed its point of view that has not been abandoned, as a principle.

Nowadays arguments of a practical nature Napoleon exposed when discussing Decree 1810 were: "Perpetuity family ownership authors would have some kind of inconvenience. A literary property is intangible property that, finding the flow of time and after succession divided into a multitude of individuals ends, somehow, by not exist for anybody; For such a large number of owners, often distant from one another, and after a few generations barely know might understand and contribute to reprint their joint work of the author? However, if you fail to understand, and only they have the right to publish the best books will disappear slowly from circulation.[21]

"It is interesting to note, however, that although the majority that time was the authors who stand for extending the term of protection of copyright, there were voices who have advocated the limitations of its most interesting arguments. Thus, in an article devoted to France this problem at the end of the eighteenth century, it was held that "once the author has revealed his opera, entrusting it to the trial to the public occurred in favor of the latter, who supplied a response to the author, a kind of transfusion, the result of which is irreversible."

**Nowadays, Adolph Dietz makes two arguments in favor of limiting the duration of the economic rights:** the first, deducted from the special nature of copyright, the second for reasons of **social interest**: intellectual works having by nature and function of their tendency dissipation conscience of mankind, people, in turn, tend to regard them as public goods, with meaning that are available to all and may be used freely[22]. Likewise, protecting social interest, expressed and Henri Desbois'[23] exclusive rights shall be exercised at the expense of society as a whole when the spirit works have a natural vocation to free propagation. "

The social interest, preventing a monopoly excessive and harmful culture in general and the special nature of copyright are reasons that imposed rule temporary nature of the rights of the author, and this rule has broadened to recognize the rights

[21] Bertrand A., op. cit. p. 289.
[22] Dietz Adolph, by Eminescu în "Copyright", Lumina lex Publishing 1994, p. 46-47p. 82-83.
[23] Desbois Henri, H. Desbois, Le droit d'auteur en France, ed. 3, p. 322.

for authors of all time their life and in favor of the heirs' timeshare.

If at first this term was 5 years post mortem (in France the years 1791 to 1793[24]), over time it extended to 70 years post mortem. The solution is contained in the Berne Convention, noting that it provides lasting less protection for certain categories of works, but is not yet universally accepted, which is why it was reaffirmed by Directive. 93/98 / EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights:

The Explanatory Memorandum to this Directive, which recommends Member States to extend the protection of economic rights, it shows that "Whereas the minimum term of protection laid down in the Berne Convention, namely the life of the author plus fifty years after his death, it was intended to protect the author and the first two generations of his descendants; Whereas the extension of the average life duration in the Community makes the term referred to is no longer sufficient to cover two generations. "

The solutions adopted by our legislature comply with the rules contained in the convention law and the Directive. 93/98 / EEC in 1993.

### 9. The general rule on the term of protection of economic rights

The duration of economic rights is limited in time, but the time period for which these rights are recognized and protected is, as a rule, variable that consists of two terms: one variable that is given life author (s) and another fixed inside which those rights belong to the heirs of the author (s).

Thus, the work of an author who still lives after its publication 60 years will be protected during its lifetime (60 years) plus 70 years for heirs. If the author lives a year after its publication, the duration of protection of economic rights will be only 71 years.

The main rule is formulated in terms of art. 25 para. 1 of Law no. 8/1996, as amended, which provides that "(1) the economic rights provided for in art. 1:21 p.m. takes the author's lifetime and after death shall be transferred by inheritance, according to civil legislation, for a period of 70 years, whatever the date on which the work was made public legally. If there are no heirs, the exercise of these rights lie with the organization collecting mandated during the life of the author or, in the absence of a mandate, collecting societies with the highest number of members in the respective field of creation. "

This applies to copyright on works published in his lifetime under his name or under a pseudonym that leaves no doubt about the identity of the author and the economic rights in all forms of expression including the right suite. From this rule were imposed exceptions for:

**i)** unpublished works during the term of protection and made public, legally and for the first time by another person who enjoys the protection of the equivalent rights (Art. 25 al. 2);

**ii)** works brought to the public under a pseudonym or without mention of the author (art. 26 par. 1);

**iii)** collaborative works (art. 27 par. 1);

**iv)** collective works (art. 28 par. 1);
At this, under the rule of Law. 8/1996 to update them by Law no. 285/2004, add two exceptions practical interest for those cases

[24] Bertrand A, op. cit., p. 289.

which raise issues of law enforcement time. These cases are:

**v)** in case of arts and crafts works the term of protection is 25 years (art. 29 par. 1 of Law no. 8/1996 prior to the amendment);

**vi)** for computer programs (art. 30 of Law no. 8/1996, prior to the amendment).

### 10. The duration of protection equivalent rights and issues raised by its regulation in our law

The patrimonial copyrights equivalent rights are afforded to the person who brings legally for the first time, make public a work that has not been disclosed inside term. What are the conditions for recognition rights equivalent? By law these conditions may be formulated as follows:

a) **have expired term of protection work;**
b) **the work has not been made public inside the term of protection;**
c) **the work has to be made known after the expiry of the term of protection, legally.**

According to the new regulation, the right of disclosure of the work rests solely with the author, but this right is transmitted, after the author's death by inheritance indefinitely. In the absence of heirs, the exercise of the right of disclosure, as well as exercise other moral rights which are transmissible by inheritance, it is collecting societies who administered the rights of the author or, where appropriate, the body with the highest number of members in respective creation. These categories are the only ones that can, at any time after the expiry of the term of protection to bring a work made public, are only entitled to exercise this right.

In other words, a work that was not published during the period of protection can be legally made public for the first time, only the heirs of the author or the collective management organization empowered. Bringing opera to public knowledge by others, makes this disclosure is not legitimate and the person who committed the act does not enjoy rights equivalent to copyright.

The law makes no distinction as one who brings to public knowledge such a work is the owner of the original or a copy of the work fallen into the public domain, the right is recognized, if the disclosure was made by several people, in favor of the He took the first initiative. But in this case it means that the expiry of the term of protection does not cause the fall of the work in the public domain, because it is not likely to be made public only by persons designated by law, so it is free to use by anyone.

### 11. The duration of protection of economic rights on works published under a pseudonym or without mention of the author

According to art. 26 paragraph. 1 of Law no. 8/1996 manner. Duration of the economic rights in works disclosed to the public, legally, under a pseudonym or without indication of the author is 70 years from the date of notification of their public.

In relation to the previous regulation, to apply the regime's longstanding pseudonymous works, provided that disclosure was required work to be held legally. It noted, however, that if the work was published illegally pseudonymous act is an offense under the provisions of art. 141 of Law no. 8/1996 way.

According to paragraph 2 of the same article, where the author's identity is made public before the expiry of 70 years from

the date of work was disclosed to the public, the duration of protection rights shall be calculated according to the rule joint (the author's lifetime and 70 years for heirs). The wording of the law might give the impression that the author's identity may be disclosed to anyone. In fact, the moral right to decide under what name will be brought to public knowledge work belongs to the author, not transmitted by inheritance, and the decision to disclose their identity can only come from the author.

Disclosure author's name after his death, however, is possible if, during life, exercising their right to a name, the author has expressed the wish that his true identity to be disclosed to the public after death (will expressed, for example, through a will).

Also on works published under a pseudonym transparent, ie when the pseudonym adopted by the author leaves no doubt about the identity of the author, the work is applied, the duration of protection, the legal rules (lifetime of the author plus 70 years for heirs).

**12. The duration of protection for economic rights in works made in collaboration**

The duration of protection of the economic rights extends the life of the author and for 70 years in favor of the heirs of authors, the term running from the death of the last coauthor. This favorable regime, which makes the survival of an author to take another author's heirs established by art. 27 paragraph 1 of Law no. 8/1996 was dictated by the fact that each contribution was needed in developing definitive work, so it would be unfair deadlines to flow separately, depending on the time of disappearance of each author. But when the authors may be individual contributions, limits shall be calculated separately for each of the authors and heirs, the date of death, according to art. 27 2ndparagraph.

**13. The term of protection of economic rights in the case of collective works**

According to art. 28, during the economic rights in collective works is 70 years from the date they are made public works. If the work is not disclosed for 70 years after its creation, the duration of rights protection expires on the 70th anniversary of its creation.

**14. The exceptions to the term of protection established by art. 29 and 30 of Law no. 8/1996 now repealed but still showing interest**

Smoothing the duration of protection for all categories of works was imposed 93/98 / EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights, which repealed and art. 8 of the Directive. 91/250 on the legal protection of computer programs that institution lasting less protection for this category of creations of the mind. Therefore, following the recommendations Directive, the legislature eliminated Romanian exceptions which stipulate shorter periods of protection for works of applied art and to programs for computers.

The articles no: 29 and 30 of Law no. 8/1996 introducing the derogatory rules for those categories of works have been repealed or amended by Law no. 285/2004, but the issue of the protection of such works under the rule of the previous law remains neutral among cases where the duration of protection was fulfilled before the entry into force of amendments to the law of copyright and related rights.

### 15. The duration of protection of economic rights on works of applied art

According to art. 29 of Law no. 8/1996 now repealed during economic rights in works of applied art was 25 years after their creation.

According to the current regulation, and in works of applied art, duration of protection is the common law, i.e. life of the author plus 70 years for heirs.

It is noteworthy, on the type of work that protection under copyright is more favorable than that granted by the special law of designs, because, on the one hand, is not subject to any formality (required special law) and, on the other hand, the duration of protection is greater in the right designs the maximum duration of protection is 15 years).

### 16. The duration of protection of economic rights to programs for computers

According to art. 30 of Law no. 8/1996 (in the version prior to the amendment), the duration of protection of economic rights in computer programs ran the author's lifetime and after his death shall be transferred by inheritance, for a period of 50 years.

Article 30 of Law no. 8/1996 amended by Law no. 285/2004, and in applying computer programs for common rule, the duration of protection that spans the life of the author plus 70 years for heirs. The exception to the rule established by Art. 30, as previous interest (perhaps only theoretically) to conflicts of laws in time. In practice, the problem is probably present little interest, because under market developments informatics term of protection of computer software is already considered too high.

The law, as previous focused on the idea exclusively on the assumption that the computer program is the creation of a single author, but we believe that he current wording of the law problem arises in the same terms since the term of protection of computer software is governed by -a separate text. What will be then, the duration of protection for computer software developed in collaboration? We believe that we should apply common rule set for works produced by several authors in the sense that protection is afforded throughout the lifetime of the author and the person's heirs at 70 years after the death of the last of the authors. In the current term of protection regulatory programs that require the solution of art. 27 rule of law is Common works are collaborative.

The consequences are more important than the omission that is determining the duration of the economic rights in computer programs for the event, according to Art. 74 of the Act, the economic rights belong to the employer, which is not regulated satisfactorily in the current regulation no. He admits, in this case, the duration of protection is unlimited means to violate a principle of law, that the limited duration of the economic rights. The omission might be considered normal if it were accepted that the employing unit does not exercise the economic rights than the period provided in the agreement or, in the absence of a contractual provision, during the 3 years as art. 44 of the Law for works produced under an individual contract of employment.

### 17. The calculation of time limits protection to the benefit of the heirs

The duration terms of protection of rights of the author the benefit of the heirs shall be calculated from January 1 of the year following the author's death or bringing work to the public (art. 32 of Law

no. 8 / 1996). In the works are collaborative art. 27 provides that: "(1) The duration of the economic rights in works is 70 years from the death of the last surviving author. (2) If the contributions of the co-authors are distinct, lasting economic rights for each of them it is 70 years since the death of the author. "And referring to collective works, art. 28 provides that "The duration of the economic rights in collective works is 70 years from the date they are made public works. If this is not done for 70 years after the creation of works, during the economic rights expire after 70 years from the creation of works. "

Referring to works of fine art, art. 29 (now repealed) provides that "The duration of economic rights in works of applied art shall be 25 years from the date of their creation," and in reference to computer software, art. 30 provides that "economic rights in computer programs lasts for the author's lifetime and after death shall be transferred by inheritance, according to civil legislation, for a period of 70 years."

It follows from the legal provisions cited that the date for calculating the term of protection of rights of the author the benefit of the heirs, as a general rule (including computer programs) is 1 January of the year following the author's death. This rule was applied by law, if in works for which the term starts from the death of the last surviving author (art. 27 al. 1), and where contributions are distinct for each contribution individually will apply general rule (art. 27 al. 2), the logical solution, given that each coauthor has a personal right of its contribution.

It is to be noted, however, that art. 32 refers only to terms that as a starting point the author's death or bringing work to the public; text no longer provides the same calculation also in the works need to the public within 70 years (the works are collaborative and collective works - art. 27 par. 1 and art. 28), which leads to the conclusion that for the latter term protection even after the creation flows and not on 1 January of the year following that in which they were created.

The term of protection does not extend when i work or collection changes are essential, additions, cuts, adjustments or corrections content, necessary for the continuation of the collection, in the way the author intended work.

### 18. The effects of the expiry term of protection of economic rights

The duration of the rights of the author differ, depending on the nature of the work (individual, collaborative or collective) how the work was made public (in the author's name, pseudonym or anonymously) the fact that the work was made public or not. In relation to these elements, the duration of protection works is different. But in all cases the expiry term of protection, the work falls into the public domain; economic rights are extinguished, intellectual and creative works can be spread in public in more accessible terms, their use not covering the payment of the authors'[25].

The concept of "public domain" may be misleading and in any case should not be confused with the term "public domain" in the sense that it is used in administrative law. The fall of works in the "public domain" means that the monopoly use of the work recognized in favor of rights holders timeshare has ceased and that since then, the work has a different destiny: she has been part of the common heritage of mankind, available all and can be used

[25] Ionaşcu Aurelian, Comşa Nicolae, Mureşan Mircea, „Copyright in R.S.R.", Academic Publishing, Bucharest, 1969, p. 127.

freely. The authors and their successors cannot invoke any unfair competition rules to get their reconstitution of deprivation which has ceased, unless the use of the work is done by a competitor under conditions that could lead to such liability.

Typically, to the public domain it belongs[26]: -the works that do not benefit from copyright protection because they lack originality; -the works which by their nature or purpose in the public domain; -the works "fallen into the public domain"[27], i.e. works whose term of protection has expired. –the works whose authors themselves have publicly available to be freely used. In this regard, it should be noted that increasingly more authors of multimedia works and programs for computers today waive their rights patrimonial putting works freely available to the public. For programs for computers that are subject to freeware, their actual membership in the public domain is questionable, because right holders waive their rights to exercise financial but users require certain conditions, breach of which equals counterfeiting. It is considered that tend to make such works available to the public, freely, to be encouraged, but that these works should be established for proper legal.[28]

In practice, the establishment belonging to the public domain involves research work life of the author and the eventual identification of heirs, the research is even more difficult in collaborative works.

The fall of works in the public domain does not mean that it no longer enjoys any protection; moral rights of disclosure of the work, to respect the integrity of the work and the authorship remain for eternity.

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[26] Bertrand André, op. cit., p. 233.
[27] They belong to that special category of official documents, legislative, administrative, legal type of papers etc.
[28] Bertrand A, op. cit. p. 236.