

Kluwer Copyright Blog

The public lending right in Greece: Sleeping Beauty and Snow White

Maria-Daphne Papadopoulou (Ionian University) · Monday, September 25th, 2023

1. ‘Sleeping Beauty’: The previous legal regime

And now the time has come to write about the lengthy story already mentioned [here](#), the story of the public lending right in Greece; the right that allows authors and other rightsholders to receive payment (usually from government) to compensate for the free loan of their books by public.

Once upon a time, back in 1993, public lending was introduced in Greece as an exclusive right, an (easy and cost-free for the State) implementation of [the Directive 92/100](#) (later codified by [Directive 2006/115](#)). Nevertheless, the public lending right was a ‘Sleeping Beauty’ for decades, since it was never applied in practice. But suddenly, a change occurred; as soon as the competent CMO made the first movements to assert the right, something was awakened. The Greek legislator, while implementing the [CRM Directive](#), included in the Copyright Law an interesting (and unexpected) provision (Article 22 (2) Law 2121/1993) according to which certain public libraries (mostly academic and school libraries) were exempted of the exclusive public lending right. At the same time, it was foreseen that a presidential decree had to be issued within one year (i.e., by 21 July 2018), which would determine the remuneration received by the beneficiaries of the public lending right, the method of collecting and distributing the



Sleeping Beauty by Victor Gabriel Gilbert

remuneration and which libraries and institutions fall under this regulation. It was also provided that until the issuance of this presidential decree, public libraries, libraries belonging to the general government, municipal libraries, libraries of public benefit institutions and organisations, and libraries of educational institutions in Greece, as well as the libraries of private schools, would not pay any remuneration for public lending.

Needless to say, several issues were raised regarding this provision, since it seemed to be contrary not only to EU Law but also to the Greek Constitution. To highlight just some of these:

In accordance with Directive 2006/115, while an exclusive public lending right is enacted (Article 1), Member States also have the discretion to deviate from the exclusive right (Article 6(1)), as long as an obligation of remuneration is established instead. The Directive in addition gives the possibility to Member States to exclude certain categories of institutions (Article 6(3)) from this obligation to pay a remuneration (ECJ cases [C-198/05](#), [C-53/05](#), [C-36/05](#) and [C-175/05](#)). Consequently, the exemption of certain types of establishments from the obligation to pay a remuneration concerns only the case where a remuneration system has been adopted by a Member State. As Greece has adopted an exclusive right for public lending, it was not permissible under EU law to adopt an exception regarding certain libraries. In any case, the aforementioned presidential decree was never enacted and, although a number of draft law amendments were prepared, none made its way to the Greek Parliament.

Thus, the public lending right, the ‘Sleeping Beauty’, was still sleeping and had to wait for five years more in order to awaken (?).

2. The ‘Snow White’ and the seven (and ½) dwarves: the current legal regime

In November 2022, Law 4996/2022 (Of. Gaz. A 218) not only implemented into the Greek legal order [Directives 790/2019](#) and [789/2019](#) (see [here](#) and [here](#)) but also (again) [Directive 2006/115](#) on the public lending right.

But this time, ‘Sleeping Beauty’ turned to ‘Snow White and the seven dwarves’, since the Greek legislator opted for a manifold approach regarding the implementation of the public lending right, introducing for some categories of rightsholders an exclusive right and for some others a right to remuneration. Initially, the system enacted by Law 4996/2022 for public lending chose the remuneration option, but soon after another amendment of Greek Copyright Law took place regarding the public lending right (Law 5043/2023/Of. Gaz. A 91) which introduced an exclusive public lending right for authors and producers of audiovisual works, as well as for the broadcasting organisations.

a. Let’s start counting the dwarves ...

Dwarf No. 1: The authors of audiovisual works

The authors of audiovisual works enjoy an exclusive public lending right according to Article 3(1)(e) Law 2121/1993.

Dwarf No. 2: The producers of audiovisual works

The producers of audiovisual works enjoy also an exclusive right to authorise or prohibit the public lending of the fixation of images or images and sound (Article 47(2)(c) Law 2121/1993).

Dwarf No. 3: Broadcasting organisations

Broadcasting organisations also enjoy a related exclusive right to authorise or prohibit the public lending of fixations of the recordings of their broadcasts (Article 48(1)(f) Law 2121/1993). Nevertheless, according to Directive 2006/115 (Article 2(1)), broadcasting organisations must not be granted a lending right in the EU, unless they also qualify as phonogram or film producers.

Dwarf No. 4: All other authors and rightsholders

? new provision has been introduced in the Greek Copyright Law (2121/1993), Article 5A, according to which there is a derogation from the exclusive right of public lending and a right to remuneration is established for all remaining authors and rightsholders. The remuneration is collected only by CMOs.

Dwarf No. 5: Exception from the remuneration obligation of certain libraries

Implementing the discretion provided by the Directive, libraries of public educational institutions of primary and secondary education (school libraries), as well as academic libraries which are members of the Hellenic Academic Libraries Link are exempted from the obligation to pay the relevant remuneration.

Dwarf No. 6: Libraries supervised or subsidised by the State or the Local Authorities

In these cases, the remuneration for the public lending is paid to CMOs from the State budget. During the legislative procedure, it was determined that an amount of EUR 350,000 annually is to be paid by the State budget to the respective CMOs as a fair remuneration for the public lending right. More specifically, 75% from the above-mentioned amount will be borne by the Ministry of Interior and 25% by the Ministry of Education. This amount will remain the same for the first three years, while afterwards a new amount will be determined by a ministerial decision. Another ministerial decision is also on track in order to regulate further details before the system starts running according to Article 5A(3) Law 2121/1993.

Dwarf No. 7: Libraries of public benefit institutions, organisations and educational institutions which are not regularly funded by the States or local authorities

Those institutions pay remuneration to CMOs, the concrete amount of which will however be decided after negotiations between the libraries and the CMOs. If an agreement cannot be reached by the end of April of each year, any of the parties may ask the courts to determine the amount of the remuneration, applying interim proceedings. With regard to the criteria, the collection, and the distribution of the remuneration the same rules apply as for the libraries supervised or subsidized by the State or the Local Authorities (see below b and c).

Dwarf No. 7 and 1/2: The employee photographer

When a photographer is employed by a newspaper or a magazine, the owner of the latter is not allowed to use the photograph in the framework of lending without the permission of the photographer (Article 38(5) Law 2121/1993).

This provision was probably maintained by accident, although it seems that that it has no practical significance since the definition of ‘lending’ will be almost impossible to apply.

b. Determining criteria for the remuneration

The criteria for determining the amount of fair remuneration, as well as for its adjustment, are inspired from the relevant guidelines from International Federation of Reproduction Rights Organisations (IFRRO) (PLR Forum 2016) and are the following: the objectives of cultural promotion; the turnover of the publishing sector; the total number of libraries; their annual funding; the total number of volumes in their collections; the total number of loans, as well as international trading practices, adapted to the conditions of Greece in view of its population and its Gross Domestic Product (Article 5A(3) Law 2121/1993).

c. Collection and distribution of the remuneration

70% of the remuneration for the public lending of literary works is distributed to authors, and more specifically to writers, translators, photographers and authors of visual works and 30% to publishers.

With regard to the public lending of sound recordings, 55% of the remuneration is distributed to authors, 30% to performers and 15% to producers of sound recordings.

It is important to mention that for the first three years after the enactment of this amendment (i.e., till the end of 2025) the rightsholders of music works are not eligible to collect remuneration, since the remuneration is solely distributed to authors and publishers of literary works. The amount of the remuneration for the authors and rightsholders of musical works will be determined by the end of 2025 through a ministerial decision.

Mandatory collective management is introduced to manage the remuneration of the public lending.

Nevertheless, given that there are more than one competent CMOs, an agreement should be reached among them for the exact distribution of the remuneration. If such an agreement is not achieved by the end of April of each year, the decision for the distribution is taken by the Hellenic Copyright Organization within a specific timeframe. The decision takes into account the views of the CMOs, good faith, honest practices and practices applied at international and Union level. If the CMOs do not agree with the above decision, they may refer to the courts applying interim proceedings.

3. Concluding remarks

Thus, time will show whether the prince will break the death-like sleep (again) of ‘Snow White’ with a kiss or if ‘Snow White’ will remain asleep after having eaten the poisoned apple offered by the wicked Queen, disguised herself as a hag.

Will rightsholders live happily ever after?

To make sure you do not miss out on regular updates from the Kluwer Copyright Blog, please [subscribe here](#).

Kluwer IP Law

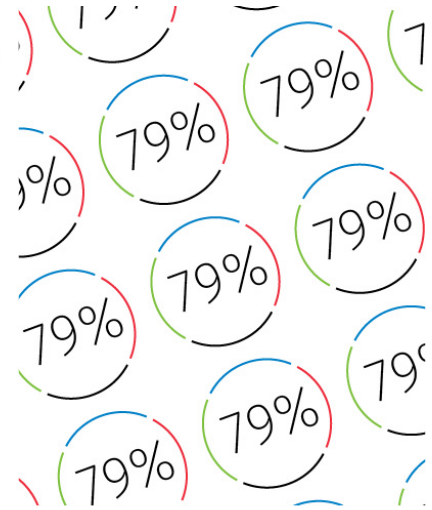
The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Monday, September 25th, 2023 at 8:05 am and is filed under [Collective management, Greece](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.