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Comparative Issues on Copyright Protection for Films in the US and Greece

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Film protection by copyright has both advantages and disadvantages. This article deals with the legal protection of films in Greece and the United States of America. The aim is to demonstrate the differences between the laws of these two countries by examining specific issues concerning the protection of films, such as protection of fictional characters and plots in filmic texts.

Keywords: Copyright, films, fictional characters, audiovisual

Films fall within the scope of audiovisual works and may also be considered as works of art. Films may be protected by copyright if certain requirements are met. Copyright law protects 'original works' and this term is defined in the Berne Convention as: "literary and artistic works shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression."[1] Such literary and artistic works include books and other writings, such as scientific texts, works of architecture, applied arts, dramatic, choreographic, musical, audiovisual, photographic works as well as any other works of authorship. This article deals with the legal protection of films in Greece and the United States of America and aims to demonstrate the differences in their laws with specific regard to the protection of films, as in protection of fictional characters and plots in filmic texts.

Film protection by copyright has its advantages and disadvantages. On the flip side, films are essentially more complicated than the classical forms of art. Paintings, writings, sculptures and other kinds of works of art are created mainly by one or two authors and protection is granted to them. On the other hand, a lot of creators are involved in the process of making a film; screenwriters, directors, editors, composers and other artists, and technicians help by contributing each to a certain degree to the final film as a whole. Secondly and most importantly, one of the main problems concerning copyright law is the element of territoriality. It is generally agreed that in principle, copyright laws are territorial in nature. There are approximately 150 national laws on copyright.[2] Every country has its own laws and, therefore, every copyright statute provides protection only within that country. As Seville points out, "their normal sphere of operation is the state in which they are granted."[3] The problem, however, is that audiovisual works usually target foreign markets, too. Of course, a lot of international conventions and multilateral or bilateral agreements regulate this area. The major international legal instruments are the Berne Convention on Literary and Artistic Works, The Universal Copyright Convention, the WIPO (World Intellectual Property Organization) Copyright Treaty, the EC Copyright Directive, and the Beijing Treaty on Audiovisual Performances. Greece and the US are both members of most international conventions concerning copyright, including the Berne Convention and the WIPO Copyright Treaty.

Greece and the US have a basic difference concerning copyright protection, originating from their legal tradition. Greece's legal system is based on the civil law tradition, as is the case in the countries in Europe, while, on the other hand, the legal system of the US is based on the common law tradition. As Roggero points out, "common law countries set their rights' principles in the idea of property. Civil law countries are more concerned about authors as individuals and less interested in economic rights."[4] Going one step further, Goldstein makes a distinction between copyright and author's right and argues:

Copyright and author's right are the two great legal traditions for protecting literary and artistic works.

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The copyright tradition is associated with the common law world—England, where the tradition began, the former British colonies, and the countries of the British Commonwealth. The tradition of author's right is rooted in the civil law system and prevails in the countries of the European continent and their former colonies in Latin America, Africa, and Asia.[5]

The distinction between the two systems is that while common law focuses on the protection of the work, civil law gives utmost importance to the author.[6] But above all, the most significant difference between Anglo-American and Continental European copyright law is the way they treat moral rights. Here it is useful to understand the origin of copyright protection in Greece and the US.

Copyright Protection in Films in the United States

General Information

Historically, in the United States, copyright protection was provided by a dual system under both federal and state laws, but in 1976, the Congress abolished most state copyrights through preemption of state copyright law.[7] The United States Constitution empowers Congress to legislate the copyright statute.[8] In particular, the Constitution states that the Congress shall have the power "to promote the progress of science and useful arts, by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."[9] This copyright law,[10] voted by the Congress in 1976, is still in force and remains the primary basis of copyright law in the United States, as amended by several later provisions.

Motion pictures were not covered as such by copyright law in the USA until the Townsend Amendment of 1912 which included audiovisual works for the first time among the types of works covered.[11] Not all national jurisdictions contain a definition of audiovisual works in their copyright laws, but the US statute has a provision[12] which defines audiovisual works as those which "consist of series of related images which are intrinsically intended to be shown by the use of machines, or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied"(17 U.S.C. § 101). Then, there is another definition in the US Copyright Act regarding motion pictures which states that they "are audiovisual works consisting of a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any" (17 U.S.C. § 101). The reason that there are two different definitions in the US Copyright Act is because motion pictures, or in other words films, are only a part of audiovisual works.

Ownership/Authorship and the Case of Originality

According to the US copyright statute, copyright vests automatically in original works of authorship as soon as they are fixed in tangible form and no notice or registration is required (17 U.S.C. § 102). The three statutory prerequisites for protection are that: (1) the work must be original, (2) the work must embody some sort of expression of the author, and (3) the work must be fixed in some tangible medium. 'Originality' means that a work was not copied from another work, rather that work is unique or unusual.[13] More fundamentally, copyright, not only in the US but in almost every national copyright law, does not protect ideas, no matter how original or unique they may be, and the protection is afforded only to the expression of this idea.

As Kent and Kaufman point out, "in practice, a low degree of originality is required; however, a minimal amount of creativity must be involved for a work to be copyrightable."[8] There are two ways of defining originality depending on the legal tradition at issue. The civil law approach requires a search for the mark of the author's personality in the work and the common law approach requires evidence of skill and labour.[14] The US legal system is close to the common law approach, but, besides evidence of skill and labour, there needs to be evidence of creative choices on the part of the author. In other words, a conscious, human choice must have been made, though not necessarily rational.[14]

In accordance with the current US copyright law, cinematographic works are considered as 'works made for hire'. So, the creators of the film, such as the director and the screenwriter, or in other words the authors, do not enjoy any rights unless they have a contract to the contrary and the producers are vested with all rights to the film directly by the law.[4] Copyright protection can also be vested in legal persons, meaning that film studios are recognized by the American law as initial copyright holders, having the authorship and the ownership of their audiovisual works. According to the American Copyright Act, the

creator of a film is its producer (persons or/and corporations) and all the artists that are involved in the creative process are treated like employees.

The term of copyright in the US is the life of the author, plus 70 years and in the case of corporate authorship (something very common in the film industry), the copyright endures for a term of 95 years from the year of its first publication, or a term of 120 years from the year of its creation, whichever expires first (17 U.S.C. § 302). According to Circular 45 of the US Copyright Office, "publication of a motion picture takes place when one or more copies are distributed to the public by sale, rental, lease, or lending or when an offering is made to distribute copies to a group (wholesalers, retailers, broadcasters, motion picture distributors, and the like) for purposes of further distribution or public performance."[15] If a motion picture is created by two or more (natural or legal) persons, then the general approach for the co-producers is to share the rights in proportion to their contribution to the film.[16]

Moral Rights

Moral rights reflect the personal interests of the author enshrined in his/her own creative expression and ensure that the works of art cannot be altered in a manner that would negatively impact the artist's reputation. Moral rights vary from country to country, but, at an international level, the Berne Convention grants authors the right to claim authorship of their work (right of paternity) and to stop any modification of it that would be harmful to their reputation (right of integrity). Even though the United States has ratified the Berne Convention, their Copyright Act does not provide for moral rights. There is only one American law, the Visual Artists Rights Act of 1990 (VARA), that provides some moral rights to the artists, but it excludes works which are created as works made for hire. Prior to VARA's enactment, the states of California, Connecticut, Louisiana, Maine, Massachusetts, Nevada, New Jersey, New Mexico, New York, Pennsylvania, and Rhode Island provided specific kinds of moral rights protection for certain types of works, particularly visual art.[17] Also, moral rights in visual artworks are protected indirectly by state tort with privacy and publicity laws.[18] So, even though VARA is the first statute to provide protection for the moral rights of visual artists throughout the United States,[19] it does not protect artists in the film industry. Works made for hire, such as films, are excluded from VARA's definition of visual art.[20]

Nonetheless, there have been some court decisions that favour moral rights. The most important and the first one chronologically is the one involving Douglas Fairbanks, a famous actor of the Hollywood silent era and co-founder of the United Artists studio.[21] When Fairbanks started to gain fame, his early films increased in value. Majestic Studio, the original copyright owner of these films, sold Fairbanks's early films and all their rights to the Triangle Film Corporation.[22] Then, in 1922, Triangle tried to sell the right to re-edit the films into two-reel serials. Fairbanks, (although he did not hold the copyrights) filed for an injunction to stop Triangle's action and argued that the new versions in the less-prestigious two-reel, serial format would be "detrimental to (his) standing in his profession, in that he has never appeared in a two-reel picture, but has only appeared in feature pictures of five or more reels."[23] The court inspected Fairbanks's contract with Majestic for guidance, according to which Fairbanks had the right to review the final cut of his films. The judgment was therefore in favour of Fairbanks with the judges deciding that the contract perpetually protected Fairbank's artistic vision.[22] This court decision indirectly protected the moral rights of an artist, even though the protection was afforded on the basis of an interpretation of the contract at issue and moral rights concerning audiovisual works were not a reality in the US legal sphere.

A lot of problems can occur because of the lack of protection of moral rights in the film industry. The most important is in the colourization of old black and white motion pictures. Through this colourization (or colour conversion) process, several studios add colour to hundreds of old black and white films, in an attempt to exploit new markets.[24] Directors, screenwriters and other artists, involved in the creative process, hold that alterations to their works are an infringement of their moral rights.[25] On the other hand, the producers, the original copyright holders of a motion picture, claim rights based on copyright law, which is founded on economic incentives.[25] There is a conflict between the personal moral rights of the artists and the property rights of the producers. As Profs Patterson and Lindberg point out "property is a favored child of the common law, personal rights, a stepchild. When there is a conflict between the two, the property rights almost invariably prevail."[26] With the producers being the copyright holders and with no moral right protection, artists cannot do anything to prevent alterations to their works.

On the other hand, in Europe, the protection of moral rights is something very important to the artistic community. American artists involved in the creation of a film will be recognized by European courts as authors of the audiovisual work and can enforce their rights, something that would not be possible in an American court. An example of such a case is that of 'The Asphalt Jungle' (1950), directed by John Huston.[27] Although the director had renounced his rights in the United States, in France, in 1991, his heirs received substantial damages over broadcast of a colourized version of the aforementioned film. Even though the copyright holder, The Entertainment Co (TEC), claimed that the colourized version of the film was an adaptation of the initial work, leaving the original black and white version intact, the French court disagreed and held that Huston was the film's author, which entitled him and his heirs to moral right protection.[4] Huston's heirs were awarded 600,000 Francs as damages for injuring the film's integrity.

Even as artists demand such kind of protection, it appears that moral rights are something that are not going to be included in the Copyright Act in the US anytime soon. According to Decherney, "over and over again, courts and Congress have come to the brink of adopting moral rights for filmmakers. But, in the end, the interests of the studios have always prevailed."[28] A characteristic example of this is former chairman of the Motion Picture Association of America (MPAA), Jack Valenti's opinion, "the reason the American motion picture industry is the most successful in the world, is that producers can attract the capital necessary to make big movies because the producers hold all of the rights."[29]

Protection of Plots and Ideas

Ideas are not protectable under copyright law; only their expression can be protected. Nevertheless, when one considers filmic texts, a major question arises: can someone copy the idea of a film and create another audiovisual work with it? As Kurtz points out, "although one who copies the basic plot or theme of a work will be taking only an unprotected idea, copying the patterning and arrangement of events and the interplay of characters can be actionable as a taking of protected expression."[30] Of course, this makes it difficult to determine the scope of copyright protection because, unlike real property, intellectual property has no physical boundaries.[30]

The current approach to determine if there is a copyright infringement is for the court to inquire whether an 'ordinary observer' would think that one work was copied from the other.[31] In other words, if a substantial part of the plot has been copied, then a copyright infringement has occurred. Nevertheless, a lot of films share some distinctive elements because they belong to the same genre. In the American film industry, genres are an important part of the audiovisual sector and the audiences request filmic texts that repeat the same narrative structures. As Decherney writes, "courts had consistently concluded that shared plots and even shared details were not original to any story; they were so old that no one could own them."[32]

The courts had to find tools for separating unprotectable genre conventions from the original materials in each film and the court decision that introduced one of the most powerful tools came from the case between novelist James M Cain and Universal Studios.[32] In this case,[33] the *scènes à fair* doctrine was introduced which distinguished genre elements and original content. In the mid-1930s, Cain wrote several novels that were adapted by Hollywood, including 'Serenade'. After the substantial economic success of the 'Love Affair' (1939), Universal Studios tried to use Cain's unpublished story 'Modern Cinderella' as an opportunity to reproduce the formula and created the film 'When Tomorrow Comes' (1939). Even though Universal Pictures acquired the story legally, Cain claimed that the film infringed a scene from his novel 'Serenade', which Universal had not paid to adapt to the screen.[32]

Judge Leon Yankwich ignored the paradox and treated the novel and the story of the film as if they were written by two different persons. The judge tried to explain the reasons for the similarities by saying that some genres inevitably contain the same plots, characters, circumstances, and themes. Certain circumstances necessitate specific follow-up scenes and some scenes demanded that characters experience specific emotions or actions.[33] The judge ruled in favour of Universal and Cain lost. This case helped in the development of standards that determined whether a plot copied another film or the elements that reproduced were mere conventional features of a genre and therefore, not copyright protectable.

In another case, Jeffrey Kouf, the author of a screenplay entitled "The Formula" about a 12-year old boy genius who invents a formula for shrinking people down to one foot tall, sued the production company of the film 'Honey, I Shrunk the Kids', Walt Disney Pictures & Television. The court said

that in order to prove copying, the plaintiff must show that the defendant had access to his screenplay and that parts of the film were substantially similar to protected elements.[34] The district court agreed with Disney that the works were dissimilar as a matter of law.

Because of the absence of special provisions in the US law regarding protection of filmic plots, every case is examined separately by the courts and protection is granted based on case law. The idea/expression dichotomy is usually not very clear, and thus, the court decisions are frequently unpredictable.

Protection of Fictional Characters

Apart from the filmic plot, another element, which falls under the scope of special issues concerning copyright protection, is the fictional character. Characters are an important part of the US film industry. It is usual to create an American film sequel or even a film franchise based on a fictional character, such as Rocky, Harry Potter or Michael Myers. Popular fictional characters frequently move from one work to another and the American film industry has been particularly interested in borrowing characters from popular culture.[35] Concerning their legal protection, Feldman claims:

Fictional characters are second class citizens in the world of intellectual property. (…) Although the laws of copyright, trademark and unfair competition, and publicity rights each offer some protection to fictional characters, none of them adequately protect the economic and artistic interests of the creator of fictional characters.[36]

The US law has no specific provisions concerning the copyrightability of fictional characters. According to Michael Marks, a fictional character has three identifiable components: its name, its physical or visual appearance and its physical attributes and personality traits.[37] The combination of these elements determines a character's copyrightability.[36]

As with the case of protection of plots, US courts have created useful tools in order to determine if a fictional character deserves copyright protection, and, according to Klement, they adopt a two-part test: Is the fictional character copyrightable, and if yes, did the alleged infringer copy such development and not just an abstract outline?[38] The basis of the principle of copyrightability of fictional characters comes from the case *Nichols* v *Universal Picture Corp* (1930), according to which a character falls under the scope of copyright protection if it is sufficiently developed and can be protected outside or apart from the story in which it appears. The court decision states that "the less developed the characters, the less they can be copyrighted."[39]

Another important court case involved Warner Bros and novelist Dashiell Hammett concerning the latter's fictional character, detective Sam Spade.[40] In 1930, Hammett published 'The Maltese Falcon' with Alfred Knopf and sold the movie rights to Warner Bros with a detailed contract giving them the exclusive rights to use the novel in movies, radio and television. Warner made two films based on the novel. Hammett, however, sold further rights to the use of the character and in 1946 licensed the Sam Spade character to a subsidiary of the Columbia Broadcasting System (CBS) which began to air a weekly series called 'The Adventures of Sam Spade'. In its decision, the court examined the contract:

"Since the use of characters and character names are nowhere specifically mentioned in the agreements, but that other items, including the title, 'The Maltese Falcon,' and their use are specifically mentioned as being granted, that the character rights with the names cannot be held to be within the grants, and that under the doctrine of ejusdem generis, general language cannot be held to include them."[41]

While ruling in favour of Hammett and CBS, the court also specified a test to define the scope of character protection. According to the judge, "It is conceivable that the character really constitutes the story being told, but if the character is only the chessman in the game of telling the story he is not within the area of the protection afforded by the copyright" (para 16 of the judgment). The decision regarding the Maltese Falcon concludes that "the characters were vehicles for the story told, and the vehicles did not go with the sale of the story" (para 17 of the judgment).

A lot of characters have received copyright protection in the past, such as Tarzan, Rocky and James Bond. The American film industry is founded on sequels and film franchises in which fictional characters are highly important, so, even though the Copyright Act does not have a specific provision on fictional characters, protection is afforded based on case law.

Copyright Protection Concerning Films in Greece

General Information

Greek copyright law[42] is based on the civil law tradition. Prior to the current statute, there were other

provisions and laws in the Greek legal system for copyright protection. The Articles 432, 433 and 371 of the old Penal Code (1834) are considered the first legal regulations on copyright protection in Greece. The laws that followed were ΓΥΠΓ/1909, 2387/1920 and the current one is Law 2121/1993 (Greek Copyright Act). It is worth mentioning that in the period the current Greek law was enacted, several European countries modified their provisions on copyright protection because of the harmonization of European law. Primarily, the Greek Constitution protects copyright with its provisions on individual rights. Furthermore, it is commonly accepted that the meaning of property in Article 17 of the Greek Constitution also covers intellectual property.

The current Greek law has a list of works that fall under copyright protection, but this list is not exhaustive. Thereby, it is easier for the law to protect new creations that result from technical evolution. The Greek Copyright Act imposes no formalities as preconditions of copyright protection [Article 6(2)] nor does it impose any requirement that a work has to be fixed. This is contrary to the US law which requires that the work has to be fixed. As in other countries, an idea cannot be protected under the provisions of the Greek copyright law, only its expression. In the non exhaustive list of Article 2(1), audiovisual works and thereby films, are listed as works that can be protected by copyright. Usually, in legal parlance, audiovisual works are the works that are created from a series of moving images, with or without sound, irrespective of specific content.[43] As mentioned this is only a legally accepted explanation and there is no clear definition of audiovisual works in the Greek copyright law.

Ownership/Authorship and the Case of Originality

Protection is vested in the intangible form of the work of art and not in the materials used to create it. [44] Based on the Greek law, creators acquire exclusive and absolute intellectual property rights, including the right to exploitation (economic right) and the author's personal right in association with the work (moral rights).[45] Although moral rights are linked to the personality right of the creator, they relate to a specific piece or work than to the personality of the author as a whole. Prima facie there are crucial differences between the US and the Greek Copyright Acts as far as moral rights are concerned.

According to Article 2(1) of the Greek Act, 'any original creation' can be protected. The 'originality' criterion in the Greek legal area can be interpreted as the examination of whether the work has statistically unique elements. In other words, a work is copyright protectable if another person, in the same environment and in the same conditions could not have achieved the same results by creating the same work. This is closely related with the aforementioned civil law approach concerning originality, which states that the work should carry the stamp of the author's personality.

The original owners of copyright can only be natural persons not legal persons, such as corporations or production studios. Under Article 9 of the Greek Copyright Act, the director of an audiovisual work is considered as the author and therefore he/she is the copyright holder. The recognition of the main director as the author of the whole film makes economic exploitation of the film and licensing contracts much easier. The producers have related rights which allows them exploit their audiovisual work financially. According to Article 52(d) of the Greek Copyright Act, the related rights of producers of audiovisual works expire 50 years after the fixation or 50 years from the date of the first publication of the work.

The term of protection in Greece the same as that in the US for natural persons, namely, the lifetime of the author plus 70 years. There is no term provided for legal persons since the law does not recognize legal persons as authors and therefore as the original copyright holders. Since audiovisual works are treated under Greek Copyright Act as a special case of joint works, there is a special provision regarding their term of protection. The 70-year term begins from year of death of the last of the following: the main director, the screenplay writer, the dialogue writer, and the composer of the music especially written for the audiovisual work [Article 31(3)]. Moral rights are independent of the economic rights and remain with the author even after the transfer of the economic rights [Article 4(3)]. However, in case of paternity rights and integrity rights, the State, represented by the Minister of Culture, may exercise the rights after the expiry of the period of copyright protection (lifetime of the author plus 70 years) [Article 29(2)].

Thus, there are crucial differences between the kind of protection provided to filmmakers and their works in the US and Greece even though both countries have signed and ratified a majority of the international legal instruments. These differences affect the way the domestic art markets are structured and a characteristic example is the film industry.

Moral Rights

In Europe, the rules on protection of moral rights are stricter and this affects the film industry sector. An example is the Italian case in which filmmaker Pietro Germi's son successfully sued a television company for interrupting Germi's movie, 'Serafino' (1968), for commercial breaks.[46] The court held that "even a single commercial break in a film constitutes an alteration of the work's integrity and therefore violates the director's moral rights."[46] As member-state of the European Union and as a country whose legal system is based on civil law tradition, Greece protects moral rights under copyright law. According to Article 4(1) of the Greek Copyright Act, five moral rights are protected, namely, right of disclosure or dissemination, the right of paternity (or the right of attribution), the right of integrity, the right of the author to have access to his work and the right of repudiation.

This kind of moral rights protection applies to authors of audiovisual works too. One of the most significant cases related to moral rights in the Greek film industry, is one where the court decided that the importation of some pornographic scenes in a film can be interpreted as an infringement of the film's actress's moral rights.[47] This case concerned a popular actress in Greece. In 1989, in the beginning of her career, she was a part of a film (in the court decision, its title is indicated as "*Ο σ. της Σ.*"), which was reproduced and available to the public as a videotape (VHS). This audiovisual work was an action film with a few erotic scenes relating to the development of the plot and had nothing to do with pornographic material. In 2005, a Greek pornographic magazine added two explicit scenes (of two and three minutes' duration) to the aforementioned film, made DVD copies of the altered audiovisual work with a two-minute advertisement of a hotline and provided it free to the buyers of a particular issue. The cover of these DVDs had the captions: 'Greek erotic cinema' and 'Strictly inappropriate for persons under 18 years old.'

Even as there was no indication of the actress being involved in those pornographic scenes, the court decided that there is an infringement of her moral rights because it was implicit that she acted in a pornographic film. According to the court decision, there was an infringement of her paternity right in her performance in the film, and also an infringement of her right to prohibit distribution of the altered film to the public.

This court decision is based on the Article 50 (1) of the Greek Copyright Act, which states that "performers shall have the right to full acknowledgment and credit of their status as such in relation to their performances and to the right to prohibit any form of alteration of their performances." In this case, since there was also infringement of the personality right of the actress, the court simultaneously applied Article 57 of the Greek Civil Code relating to the right of personality. The decision was in favour of the actress and the magazine had to pay 30,000 Euros in damages.

In another similar case involving 15 Greek actresses,[48] from television and cinema, the defendant, the owner of a website, uploaded scenes from their films which viewers could watch. In this case too, the court ruled in favour of the actresses because, based on the moral rights doctrine, a performer could decide whether or not the whole (or part) of his/her performance could be shown and/or distorted.

The primary moral rights protection is accorded to authors, although the above examples pertain to performers' moral rights. In another case, three daughters (lawful heirs) of a deceased music composer, used their father's moral rights against a theatrical producer.[49] This producer remade a classic Greek film of 1958 as a theatrical play and reused two of the songs of the aforementioned composer from the original film. The use of the two songs was made without the consent of the lawful owners, i.e., the composer's daughters. Further, the parts of the songs were modified and the new versions were substantially different from the original. Above all, there was no reference to the original composer and the flyers that were distributed to the audience falsely attributed the creation of the music to another person. The court decided that there was an infringement of moral rights, since the daughters of the music composer as his heirs held the right to determine where and how the work was going to be published, and of course, to prohibit any alteration. Moreover, there was an infringement of the paternity right because of the misleading information as to the identity of the creator of the music. The court awarded 4000 Euros each as damages to the daughters of the music composer.

These cases are just some characteristic examples of the way in which the Greek law implements the moral rights doctrine. Moral rights help artists (and their heirs) protect their personality embodied in the works. Moral rights happen to be one of the basic

differences between the Anglo-American and European copyright law system and, in this case, the between the US and Greek Copyright Acts.

Protection of Plots and Ideas

The plot of a film is a very important part of the whole. Just like the US Copyright Act, Greek law does not have a specific provision concerning the protection of cinematographic plots. Therefore, one needs to take into account the case law regarding this topic.

One of the most important cases that can help one understand the way cinematographic ideas and plots are protected in Greece is the court decision in which a mother and a daughter took legal action against a television series claiming that the plot was stolen from them.[50] The two women had written a story of a TV series in ten pages in Filmexpose (or bible) format and the first two complete episodes under the title *Δεύτερη Ευκαιρία* (English translation: Second Chance). The TV station, Mega Channel, did not accept their project and produced, and broadcast another daily television series under the title *Φιλοδοξίες* (2003-2006) (English translation: Ambitions). The two women claimed that the structure of the plot was very similar to theirs. The court took both plots and compared them in order to see if there were substantial similarities regarding the idea and their narrative. The judges could not find infringement and ruled in favour of the daily TV series.

The judges went a step further to point out that the themes of all daily TV series have the same plot regarding human relationships. These scripts, just like the one the two women wrote, did not have enough original elements capable of copyright protection, and were not original in manner that could give them copyright protection. The court decision stated that plots similar plots to the two aforementioned scripts could be found in a plethora of audiovisual works made for television, such as the American TV series 'The Bold and the Beautiful' (1987-present), 'Dynasty' (1981-1989), 'The Young and the Restless' (1973-present) or the Greek *Έρωτας όπως Έρημος* (2003-2004) (English translation: Love like Desert), etc.[50] With these examples in mind, the court decided that there were not enough original elements in the work of the two women and, even if there were some substantial similarities between their work and the daily TV series of Mega Channel, they could still not be claim copyright protection because of lack of originality. Thus, Greek courts analyse in depth the structure of the plot and if they find evidence of some standardized elements in the story that are also found in numerous other similar works, they will not consider such a work worthy of copyright protection.

Another similar case is the one that involved the Greek film *Ο Καλύτερος μου Φίλος* (2001) (English translation: My Best Friend).[51] The judges decided that the claims of a playwright that the story was copied from one of his plays were groundless and none of the two scripts (play and screenplay) were original enough. According to the court decision, the plot was similar to several other theatrical and cinematographic versions. Therefore, an idea or a plot is copyrightable only if the elements are original and can be used freely by anyone if otherwise.

Protection of Fictional Characters

Greek copyright law does not have a specific provision to protect fictional characters and the examples of purported protection come from case law. Since there are no cases relevant to films in Greece, cases not related to films are discussed in order to understand how protection of fictional characters works in Greek law. Greek courts have accepted that, if a human or animal character has a particular form through sculpture, painting, or any other kind of model, then copyright protects these characters and they cannot be reproduced without its author's consent.

An illustrative case is the one where an American company, which was the copyright holder of several cartoon characters, took legal action against a Greek company. In this case,[52] the Greek company was the creator of the 'Lucky Back', a paper bag which had stickers, balloons and other toys. Among others, there were exact replicas of two fictional characters, SpongeBob Squarepants and Dora the Explorer, whose copyright was held by the American company. The court decided it to be an infringement and ruled in favour of the American company. Apart from copyright infringement, the court also stated that the use of such figures can be very confusing for the public and the action could be interpreted as unfair competition.

Another court decision relating to protection of fictional characters, involved the TV and film series, 'Hercules'.[53] A company started to sell plastic dolls that looked like characters from the franchise with the word 'Hercules'. The judges decided that there was a copyright infringement and ruled in favour of the copyright holders of the franchise.

Just like in the case of the protection of plots in Greece, the requirements of protection of fictional characters are much stricter than in the US. Nonetheless, it needs to be taken into account that the Greek film industry in not as big as the American one and there are no Greek film franchises based on one or more fictional characters. So, there has never been an actual need for protection of fictional characters which is why Greek case law in this regard is not so developed.

Comparison of the US and Greek Copyright Law

The differences between the legal systems in the US and Greece have a crucial impact on the way the film industries function, which is also influenced by the extent of the market these film industries address. One of the most important differences between the United States and Greece is that while the former recognizes both natural and legal persons as original copyright holders, the latter allows copyright protection only to natural persons. This has greatly influenced the way Hollywood has shaped to its present form. Studios and film producers play a very important role in the American film industry, which is strengthened by them having all the rights in the audiovisual works. The producers as authors of the work find it much easier to secure financial assistance for their film projects. On the other hand, Greece considers the director as the copyright holder of a film and provides related rights to its producers. The emphasis is on the artistic value of the audiovisual work and the producers have only have rights to exploit the film financially.

This distinction makes clear why and how the aims of the two film industries are different. In the American film industry, the focus is on profits and the audiovisual works are treated as economic products. North American audiovisual works travel abroad extensively and make substantial profits, which is why producers are given the copyright under the American Copyright Act. Greece, on the other hand, has a much smaller film industry, which treats films as works of art and the economics is secondary. Also, the Greek film industry is based on the needs of the small domestic market with a few films finding their way to the festival circuit. This is also reflected in the fact that the American Copyright Act considers audiovisual works as 'works for hire' while in the Greek law films are treated as joint works.

Consequently, the way audiovisual works are created and treated influence the nature of protection granted in these two countries. In the US, the idea is that a film must be economically successful in order to bring profits to the studio that has produced it, while in Greece, a lot of films are produced with the artistic value in mind to be accepted by film festivals and other artistic fora. The aforementioned distinction between common law countries (and their emphasis on profit) and civil law countries with emphasis on protection of artists is reflected in the manner of functioning film industry system.

Considering the orientation of the two film industries it is clear why Greece provides moral rights while the US law does not. If the American film industry had to deal with moral rights, producers would face impediments in exploiting their films completely. Giving moral rights to screenwriters, directors and other authors who contributed to the creation of a film could change the dynamics of the US film industry as we know it. Even if producers remained owners of films, the creators of the audiovisual works could legally set hurdles in their path to profits, something that could be catastrophic for Hollywood. Greece, however, follows the civil law tradition and remains faithful to the European tradition. Even though only the director is recognized by the law as the main author of a film, all the contributing creators are have moral rights vested in them, including the actors themselves.

Finally, the distinctive focus on economic gains and artistic values that governs the two film industries also has an impact on the protection specific issues such as narrative plots and fictional characters. Whereas neither of the two national copyright laws have definite provisions to regulate these issues, case law from each country has developed differently according to the needs of its domestic film industry. The American film industry is based on sequels and film franchises to a significant extent, and therefore, the protection of plots and characters has a vital role in the survival of Hollywood studios. There are several US cases regarding these issues that have developed quite a few tests to determine if a character or a plot deserves copyright protection. On the other hand, Greece's film industry is very small and there are hardly any relevant disputes so as to have a strong case law in this area.

Conclusion

Copyright law is governed by the element of territoriality. Each country has its own laws and, therefore, each country has its own protection of

intellectual property. The differences between the US and Greece are significant because each country follows a different legal tradition; Greece's legal system is based on civil law tradition and, the US legal system on common law tradition. Moral rights are an important part of Europe's tradition and Greece's in particular. They are used to protect the author because intellectual property embodies his/her personality. There is no place for moral rights in the legal system of the US. There are some forms of moral rights for visual arts, but, audiovisual works are exempted from this protection. Also, in certain instances, moral rights could be indirectly protected through contract law or even tort law.

As far as cinematic narrative plots and fictional characters are concerned, there are no copyright provisions in either country to protect them, and case law has significant differences originating from the way the two film industries developed. US protects plots and ideas because a big part of its film industry is based on film franchises while, on the other hand, Greece has much stricter rules for them, according to which filmic plots must have a high degree of originality based on their dramaturgical elements, and fictional characters deserve copyright protection only if they are animated or if their appearance have a particular form.

With the economic aspect taking precedence in the US and the artistic content in Greece, along with the fact that in the US law recognizes a legal person as the original copyright holder while Greek law does not; have impacted the development of the film industries significantly. The aforementioned differences hold a practical value in that they can be interpreted as catalysts in the shaping up of the current form of each domestic film industry.

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