

LEGISLATION IN TOURISM

THE ROLE AND IMPORTANCE OF COPYRIGHTS IN TOURIST PUBLICATIONS

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Abstract: *Copyright protection is crucial for the issuing of tourist publications. High standards in respect of copyright protection in tourism are a sign of a healthy business climate and foster development of this industry. On the contrary, non-compliance with copyrights laws has very negative impact on tourism. Foreign companies are not willing to do business in countries where copyright protection is not guaranteed, and respecting the copyrights of texts, pictures and other materials directly affect their quality on the market, since if the copyrights are not respected, the authors have no interest to produce a high quality product . Copyrights are regulated by local laws, which in most European countries have identical content. There are international conventions and treaties that are also regulating this area, which are of great importance, such as the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty and the EU Directive 2001/29/EK from 22.05.2001. More than three quarters of countries have signed and ratified the Berne Convention, and this text contains analysis of its impact on local legislation and reflects on the situation in practice. Based on a detailed analysis of the solutions found in international treaties and local legislation, the author gives proposals for specific solutions in legislation of this area. Important legal issues specifically addressed in the paper are: copyright protection in situations when the author of the publication is unknown ; the restrictions of copyright protection in relation to the information that have a status of usual press information, including their attachments (photos, illustrations, sound, etc.); the rules about citing sources in tourist publications; analysis of the principle of self-protection of copyrights , as the primary principle of copyright protection; judicial protection of copyrights. The paper contains a special judicial analysis of copyright protection in cases where a violation of copyright law in tourist publications and / or media reports related to tourism events (including Internet postings and websites of tourist organizations) has resulted in lengthy legal processes. The paper gives suggestions for improvement of legislation, to facilitate judicial resolution of copyright disputes and to prevent them in the future.*

Key words: *Copyright, tourist publications, quality, Copyright Treaty, EU Directive*

Copyright is the foundation of the legal system of any civilized country. Economically developed countries pay special attention to copyright whereas the authors are guaranteed a fair and effective compensation for violation. In former communist countries that have

gone through a turbulent period of transition, copyright is far less respected and the application of the relevant law in practice is still difficult.

Copyright protection is crucial for tourist publications. High standards in respect of copyright in tourism are the sign of a good business climate and benefit to the development of this field. In contrast, non-compliance with copyrights has negative impact on tourism. Foreign companies are not willing to do business in countries where copyright is not respected. Disregard for copyrighted texts, images and other material, directly affects the quality, because in this case the authors are not interested in producing a quality product.

Copyrights are governed by local laws, which have identical content in most European countries. After several years of implementation of the Law on Copyright and Related Rights of the Republic of Serbia (Official Gazette of RS, no. 104/09 and 99/11), inconsistent practice in application of the law as well as its shortcomings became apparent.

The shortcomings of the present Law on Copyright and Related Rights are primarily related to the incompatibility between national judiciary and international legal regulations, which are mandatory due to the fact that Serbia is a signatory to most international conventions dealing with this issue. In addition, one of the critical conditions for EU membership is the compliance of Serbian legislation with EU legislation. However, Southeast European countries, especially candidates for EU membership, have encountered similar difficulties and dilemmas in law implementation.

The biggest single problem in the implementation of copyright law in the region is the lack of uniformity in the practice, both within individual countries and internationally. The position of the legal system of the country, when the legal solutions and their application in practice vary dramatically from court to court, and / or from state to state and threaten to undermine the legal certainty and harmony within the country and / or region. This can lead to far-reaching legal consequences, which are reflected in the judgments of the Court in Strasbourg.

There are international conventions and treaties that govern this area and are of great importance. For example, the Berne Convention for the Protection of Literary and Artistic Works, the WIPO Copyright Treaty and the EU Directive 2001/29/EC of 22 May 2001. More than three-quarters of the countries have signed the Berne Convention. That is the reason why its impact on local legislation and reflection on the situation in practice is dealt separately in this scientific work.

- Berne Convention for the Protection of Literary and Artistic Works (Law on ratification of the Berne Convention for the Protection of Literary and Artistic Works - Official Jour. 14/75 and Official Gazette of SFRY - International Treaties, no. 4/86 - Regulation)
- WIPO Copyright Treaty (Law on Ratification of the WIPO Copyright Treaty, Official Journal of FRY - International Treaties, no. 13/2002)
- The EU 2001/29/EC of 22 May 2001

Particular important is the Berne Convention, signed in the Swiss capital on September 1886 which is the main international source of the law in this field. More than two-thirds of the countries are signatories to the Convention. However, many local regulations (legal practice in particular) have not complied with it, even in cases when several decades have passed since certain countries have joined the convention.

Implementation of international legal sources and their recognition, make them an integral part of the legal systems of some countries and in some countries (e.g. the Republic of Serbia, Belgium, etc.), international acts are not only part of the legal system, but are above the national law. Implementation of Berne Convention in South Eastern Europe has met a lot of problems, which are most successfully resolved in the countries that have already become members of the European Union.¹

Important legal issues which arise in the process of law implementation, due to unclear text of the law or due to the application of the text in the practice, are

- 1. The author of a tourist publication is unknown;**
- 2. Restricting copyright protection in relation to the information having the character of media information, as well as their attachments (photos, illustrations, sound, etc.);**
- 3. Quoting sources in tourist publications;**
- 4. the principle of the primacy of non-material indemnity for non-material damage;**
- 5. The principle of self-protection of copyrights.**

Legal solutions presented in this paper are supported by the Association of Writers of Serbia, on whose behalf the request was made to change a given legislation and a positive opinion obtained from the Ministry of Education, Science and Technological Development.

1. In particular, the Republic of Croatia has harmonized its legislation with the Convention and the European Union in a quick and efficient way

Given the fact that certain provisions apply to journalists, the relevant professional organizations were consulted and asked for support regarding suggested changes, notably the Association of the print media that assembles fifteen (15) newspaper and publishing companies and agencies. The solutions presented in this paper are supported by Beta and Fonet.²

1. The author of a tourist publications is unknown

The authors of small-scale tourist publications (particularly brochures to three pages, maps, postcards, local tourist organizations or companies, etc. are rarely indicated and usually unknown. However, this does not mean that it is automatically allowed to use information, photos, etc. from such materials. On the contrary, the laws and international conventions guarantee copyright protection even in these cases.

It is necessary to make distinction between the legal situation when the author is unknown and not indicated in the publication, or the author's information is hard to reach. The reasons range from the situations when the author and the publisher do not want to be known to the situations when they do not want to publish their identity for other reasons. This is especially common with tourist and promotional materials in areas with unstable political climate, or the breakaway provinces (e.g. Kosovo and Metohija, Transnistria, etc.).

It is a quite common that the author and publisher are both unknown, as in anonymous or pseudonymous works, the author and publisher are the same person (so called "samizdat").

To make copyrights protection possible in cases when the author or publisher is unknown³ (anonymous or pseudonymous), it is suggested that the authors and / or publishers are by default represented by a professional organization to which the author i.e. publisher would naturally belong.

Berne Convention allows states to regulate this situation on their own. Comparative law offers a solution, as it has been in Yugoslav law.

Professional organizations primarily protect the interests of the author and his work (inviolability of a work, its integrity, prevention of misuse, misinterpretation, i.e. Author's Moral Rights) since the publisher may have commercial interests, as well as the person who has published a work regardless of the author's authorization.

2. On the initiative of the Committee for Culture of the National Assembly of Serbia, given suggestions have entered the procedure, and will probably, in whole or in part, represent the new legal solution

3. It is usually the anonymous author or the author signed under the pseudonym

Publishing works under a pseudonym or without the author's name is especially common for travel works about politically unstable parts of the world. Writing about individual tourist destinations is subject to strong political pressure and even life threats (e.g. Nagorno-Karabakh, the Middle East, Afghanistan), which may force the author to conceal his identity.

In case that the author did not engage a natural or legal person that is concerned about his copyrights and respective substantive rights, that obligation could and should be taken by the appropriate professional association in the field of tourism - for example, the Association of Tourist Guides of Serbia if it is about a guidebook etc.

2. Restricting copyright protection in relation to the information having the character of media information, as well as their attachments (photos, illustrations, sound, etc.)

Legal doctrine as well as legal solution and practice in most countries have acknowledged that copyright protection is not unlimited, and that there are certain circumstances provided by international legal acts, laws or regulations when copyrights may be suspended. This primarily refers to information of mass media, culture and other importance and / or ordinary media information which make an integral part of everyday journalistic reporting on events at home and abroad, and their attachments (photos, illustrations, sound, etc.). Thus, daily and other news as well as other information with the character of ordinary media information are not considered copyrighted works, regardless of the forms of its expression.⁴

However, the inconsistent law practice and insufficiently clear Article 43 of the Law on Copyright and Related Rights in the Republic of Serbia are the reason of tens of disputes. Specifically, the existing law, based on international legal document, provides the suspension of copyright when the copyrighted work is in the scope of informing the public with the means of the press, radio, television and other media on current events, in the volume which corresponds to the purpose and manner of reporting on the current event. Without paying author's remuneration⁵, it is allowed: 1) the multiplication of the copies of the published works which appear as the integral part of the current event

4. It clearly follows from Article 2 Paragraph 8 of the Berne Convention for the Protection of Literary and Artistic Works which specifically states that copyright protection does not apply to news of the day or to miscellaneous facts having the character of mere items of press information

5. Law on Copyright and Related Rights of the Republic of Serbia, Official Gazette no. 104/2009, 99/2011 I 119/2012

that the public is being informed about; 2) preparation and multiplication of the short extracts or digest from the press and other articles in the press reviews; 3) multiplication of public political, religious and other speeches given in the government bodies, religious institutions or during the state or religious festivities; 4) free use of daily information and news which have the nature of the news report. Article 43 of the Law provides that the provision of the paragraph 1 of this Article is duly applied to all forms of public communication of the mentioned works. This legal solution is the same in all EU countries, but it is usually given with obligatory interpretation, or the text of the same legal solution is clearer and more specific. In Serbian law, there were serious legal problems because neither this provision nor any other clearly regulates the copyright protection of newspaper reports in accordance with this Law and Convention, although it is necessary to distinguish literary works from ordinary, everyday media reports. This has led to serious issues in practice so the same cases were resolved differently even with different judges of the same court.

This problem affects tourist publications in two ways:

1. When newspaper articles, texts, stories or photos of a newspaper pages or article are used for the purpose of illustrating and promoting certain tourist attractions. According to the current legal solutions, the author of tourist publications should treat the author of an article or a photo as the author of any other author's work, which is neither legally nor logically true. The consequences of such a legal interpretation could produce great harm to the authors of tourist publications. On the basis of material and non-material indemnity belonging to the author of the artwork, the authors of ordinary newspaper articles or illustrations which are paid by special journalistic rates could ask for significant sums of money on behalf of material and non-material indemnity. This is especially due to the fact that articles include illustrations which are usually small-sized thus making it impossible to sign the author, which significantly burdens and reduces the effect of a tourist publication.
2. When media uses material from the tourist publications for the purpose of daily reporting; particularly frequent are the court cases where the information from a publication or the website of a local tourist organization or other legal or natural person are used for the purposes of daily reporting in individual news stories and the like. Court statistics confirm the seriousness of this problem showing that in 2013 more

than a hundred lawsuits were initiated in the Republic of Serbia because media used photos or texts of a third party for the purpose of everyday reporting without the author's permission.

3. Quoting sources

Quoting copyrighted works in a certain way and to a certain extent without paying author's remuneration is agreed everywhere in the world as far as the authorship is properly named and intangible copyright respected. Copyright suspension varies depending on jurisdiction, but is almost always applies to quotations of a smaller size used for specific, mostly educational, scientific, and similar purposes. These rules are of great importance for printing tourism publications since they often include quotations from literary and historical works in connection with destinations being promoted. Given the type and volume of tourist publications it is not always convenient to make enough space for specifying the source details⁶ (e.g. leaflets, materials of smaller size - up to 75 pages that do not have the character of a book).

In the Republic of Serbia, there are common provisions on limitations on copyright⁷. Article 41 of the Law provides that in cases of exploitation of copyrighted works under the provisions of this Law, one shall specify the name of that work's author and the source from which the work was taken (publisher of the work, year and place of publication, periodical, newspaper, television or radio station where the work or a part of it was originally published or directly taken from, and the like). In each case, the scope of limitations on the exclusive rights must not be in conflict with a normal exploitation of the work or not unreasonably prejudice the legitimate interests of the author. This solution is widely accepted in world and particularly European legislation, since this legal institution is regulated by the Berne Convention, adopted in two-thirds of the countries of the world. Namely, Article 10 of the Berne Convention provides that in cases of copyright limitations "the source must always be clearly indicated; the legal consequences of a breach of this obligation shall be determined by the legislation of the country where protection is claimed."

He proper quotation of used sources in tourist publications (as well as the proper quotation of tourist publications in publications of other kind) is of great importance for the development of the tourism industry.

6. For example, brochures and materials which according to library standards do not fall within the monographs, i.e. books

7. Law on Copyright and Related Rights of the Republic of Serbia, Article 41

4. The principle of the primacy of non-material indemnity for non-material damage

It is very important to established uniform methods for indemnifying material and non-material damage both in legal solutions and judicial practice. However, the laws regulating the rights of a party to indemnification are not at the same time dealing with copyright law, which may lead to ambiguities and contradictions in their application. In most countries, there are specific regulations governing the civil law in general (civil codes) or a separate law governing contractual relations.⁸

Bearing in mind that it is very difficult to express moral, non-material rights in money, it is fair and generally accepted that in such cases the violation of such rights should be indemnified in moral, non-material way, and only if this is not possible with fair and reasonable compensation. Any author and/or performer has the right to file a suit and request compensation for non-material damage for violation of his moral rights – this is not questioned, and in most copyright laws it is explicitly stated. When it comes to compensation of any material damage, the court may order, at the expense of the indemnifying party, the publication of the judgment or its correction or anything else that would reach the purpose, and if that is not possible it will award the author or performer equitable indemnity for mental pain due to a violation of his moral rights, if he finds that the circumstances of the case and particularly the intensity of pain and its duration, provide a corresponding ground thereof. However, legal solutions do not elaborate in detail the issue of indemnity and in particular the principle of the primacy of non-material indemnity for non-material damage, which causes problems in the court practice in some countries, where inexperienced judges apply the principle of the primacy of money indemnity for non-material damage.

However, only the application of the principle of the primacy of non-material indemnity for non-material damage leads to fair solutions in practice and possible peaceful settlement of many disputes. It is in the best interest of both parties, and especially in the interest of a plaintiff who must bear the costs of starting and running a lawsuit (court fees,

8. In the Republic of Serbia it is the Law on Obligations (Official Gazette of *SFRY*, no. 29/78, 39/85, 45/89 - Decision of the CCY and 57/89, Official Gazette of *FRY* no. 31/93 Official Gazette of SCG no. 1/2003- Constitutional Charter). Article 199 of the Law regulates the publishing of the judgment or its corrections, whereas the Article 200 establishes the procedures for compensation for non-monetary damages where the court shall take into account the significance of the value violated, and the purpose to be achieved by such redress, but also that it does not favor ends otherwise incompatible with its nature and social purpose.

representation costs, etc.) and may be indemnified by the defendant only after completion of the procedure depending on the success achieved in dispute. In this way, the courts would also be unburdened of the cases that are the result of high expectations of indemnified party or apparent intention of the indemnifying party to avoid or reduce his obligations.⁹

This rule is of great importance for tourist publications, especially when it comes to accidental or intentional violation of copyrights. It is important to prevent misuse and to fulfill justice: whenever possible, non-material damages would have to be compensated primarily by non-material means (for example, the correction in the next issue of a periodical, correction in the new edition of a brochure), and only when this is not possible, by compensation.¹⁰

Due to insufficiently clear legal solutions, case law in the Republic of Serbia has become extremely inconsistent. Experts of different professions being engaged in disputes are not coordinated and often suggest diametrically opposite solutions even when they are from the same field. This further increases the costs of a proceeding and delays the payment of adequate compensation, but also destroys the legal system due to the inconsistency of legal solutions in the cases of the same kind.

Uniform application of the same legal solutions in the practice of different countries, especially countries of the European Union and candidate countries, is very important for the harmonization of the law in the wider European region and the international community. This kind of legal solution is also in utter compliance with the Berne Convention.

5. The principle of self-protection of copyrights

Article 11 of the Law on Ratification of the WIPO Copyright Treaty ("Official Gazette of FRY – International treaties, no. 13/2002) and Article 6, Item 3 of the EU Directive 2001/29/EK from 22 May

9. This is particularly striking in a number of court cases in the Republic of Serbia were initiated during 2012 and 2013 (so-called "mass lawsuit"). The large number of photographers started looking for abnormally high compensations for non-material damage from the media and local tourism organizations.

10. One should bear in mind that very high compensations, particularly for non-material damage can lead to the extinction of certain media, companies, and local tourist organizations. To illustrate, in the beginning of 2014 the Tourist Organization of Serbia was faced with the threat of lawsuits and claims for damages in the amount of up to 87.000 euros for the unauthorized publication of the telegram announcing the declaration of the First World War, the property of the Republic of Serbia, which is stored in Archives of Serbia, whose permission is required for publishing material in their jurisdiction.

2001 regulate certain aspects of copyright and related rights in the information society. In this regard, the special protection is provided to those authors who have applied prescribed effective technological measures. Taking into account the specificity of the Internet as a global computer network which can be accessed by every inhabitant of the planet, there are consequences of "unrestricted approach" to the appropriate content. For the purpose of developing and ensuring the protection of copyright in literary and artistic works in the most efficient and uniform way, at the same time recognizing the profound impact of the development and exchange of information and communication technologies on the creation and use of literary and artistic works, WIPO emphasizes the great importance of copyright protection as an incentive for literary and artistic creations.

It also points out the need of maintaining a balance between the rights of authors and the broader public interest, particularly in the field of education, research and access to information. It is emphasized that it was signed in accordance with Article 20 of Berne Convention for the Protection of Literary and Artistic Works, and nothing therein should derogate from existing obligations that Contracting Parties have to each other under the Berne Convention. On the contrary, the article even points out that the Contracting Parties must comply with its Articles including the annexes. In order to protect the author and his work but also to prevent possible abuses, the international community has provided a special copyright protection, but only in the event that the author has taken certain technological measures and that the third party is informed about the rights.

Taking the technological measure prevents possible misuse of works in electronic media (internet), and thus protects the copyrighted works as well as the authors from violations of property and moral rights of the author.

In tourist publications, it is particularly important that the authors themselves, be they the authors of articles or photos, do the minimum necessary to protect their copyrighted works - primarily by putting their name, logo, or other trademark in a designated place. If the author fails to do so, the relevant copyrighted works may be considered free and taken over by the authors of other publications in unchanged form, with no obligation to indicate the original author and without violating the law. This particularly important because of the prevalence of the Internet and the use of materials on the global Internet network, which is provided by many internet contracts. This solution is drastically different from the solutions encountered in the legislation of most Eastern European countries, which respect the presumption of

authorship, i.e. the desire of an author that his moral rights (notably the right to the indication of authorship) are respected, and that without his consent, even if he had not stressed his authorship, his copyrighted works must not be taken over.

Copyright protection problems before the courts

In Serbia, there is a great number of court proceedings (over a hundred), started mostly by photographers against media and tourism organizations that have used their photos. In certain number of cases it is about the unauthorized use of photos, when some local tourism organizations have used photos that have been on the internet on their own websites and in their own publications, and which, they thought, were not copyrighted. This is the case of violating both tangible and intangible copyrights. However, most of the cases relate to the violation of the author's moral rights. These are the cases when the organization paid the author a fee for the use of copyrighted works but did not indicate the author's name in the later part of the distribution, which indisputably makes the violation of moral rights. However, most of the cases are those of everyday media reports where the respondent may call upon the restriction of copyright protection under applicable law. In most cases, the authors themselves made no efforts to protect their copyrighted works, even in a usual professional way in cases where plaintiffs are professional photographers. Given the fact that they usually ask for compensation which is several thousand times bigger than the value of the work, there is a particularly important principle that non-material damage should be primarily compensated by non-material means.

There are number of reasons which lead to massive violation of the authors' moral rights. On one hand, the remnants of communist and socialist mentality, where many people still do not understand the importance of respecting each and every segment of copyrights. On the other hand, the development of new technologies and disorientation in the new, electronic era, have led to serious mistakes in media and tourism organizations. Uploading photos to the Internet without any protection is often interpreted as the publication of photographs of mass consumption without any restrictions. On the other hand, the large media companies, primarily large agencies such as Tanjug, Beta and FoNet, do not practice indicating the name of photographers, if they themselves have not already done so. Given that most other media organizations use portals of these agencies for the provision of materials, there is a chain reaction of mass copying one violation committed copyright.

These, mostly pending court proceedings in Serbia are drawing attention to the current problems of limitations of the copyright protection and the importance of detailed regulation of the compensation for non-material damage in this area.

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