

Limitations and exceptions for the visually impaired in the Serbian Copyright Law

Article 54 of the Law on Copyright and Related Rights of the Republic of Serbia (dated from 2009, amended at 2011 and 2012), prescribes limitation and exception of copyright for the benefit of persons with disabilities. It requires specifically that the use of protected work must be in direct connection with the given disability and must stay within the scope required by the specific type of disability.

Article 54 reads:

“For the needs of the persons with disabilities, it is allowed, without the permission of the author and without payment of the remuneration, to copy and distribute the work protected by copyright, if such a work does not exist in the required form, if its use is in direct connection with the disability of persons concerned and in the scope that is required by a specific kind of disability providing the copying and distribution has not been made for the sake of realizing direct or indirect commercial gain.”

Article 54 enables authorized persons to reproduce and to distribute protected works without rightholders permission and without paying them in return.

As for the adaptation of the protected work in the format accessible to the persons with disabilities and alike, article 54a of the Law on Copyright and Related Rights reads out:

“Free adaptation of the published copyright protected work is allowed when it concerns adaptation connected to the allowed use of the work, which is caused by the very nature or manner of use.”

Following the wording of the Article 54a, it is evident that the Law on Copyright and Related Rights does not permit explicitly the import of accessible format copies for the benefit of beneficiary persons.

According to the article 54, entity authorized for exercising copyright limitations for the benefit of disabled persons are the one which provide disabled person with accessible format copies. The Law on Copyright and Related Rights does not require authorized entity to accomplish any formalities or to undertake any specific procedures respectively in order to be recognized as such.

The other requirements for the exercise of these copyright exceptions are:

- a) that the work protected by copyright does not exist in the required form (the form which is normally acceptable for the usage);
- b) that the reproduction and distribution of the work has not been made for the sake of accomplishment of any direct or indirect commercial gain.

Law on Copyright and Related Rights apply three-step-test with regard to exceptions and limitations of copyright and related rights. Namely, exceptions and limitations are confined to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

Protection of audiovisual performances in the Serbian Copyright Law

The Serbian Law on Copyright and Related Rights (dated from 2009, amended at 2011 and 2012) grants both economic and moral rights to the performers of audiovisual performances.

With regard to his live performances or performances fixed in audiovisual fixations, performer enjoys the following moral rights:

- to be recognized as performer of his performances;
- to have his name indicated on each copy of the recording, in the program or in any other suitable way each time his performance is exploited, unless where that is technically impossible or impracticable due to the actual form of the public communication of the work;
- to oppose the alterations to his performance or any exploitation of the performance in an altered form, should that jeopardize his creative or professional reputation;
- to oppose placing of a recording of his performance on the market, if such recording has technical deficiencies that jeopardize the integrity of the performance, and thereby the performer's reputation;
- to oppose the exploitation of his/her performance in a way that jeopardizes or could jeopardize his honor or reputation.

Performer of audiovisual performances is granted with following exclusive rights to prohibit or to permit:

- recording of his unrecorded performance and reproducing such copies of the performance;
- distributing the recordings of his performance in the market;
- renting the recordings of his performance;
- broadcasting and communicating to the public his unrecorded performance, except in the case when the performance is already broadcasted;
- making the performance available to the public interactively by wire or wirelessly.

In addition to the above mentioned, performers of audiovisual performances are authorized to charge remuneration for private copying, namely for the import or sale of technical devices and empty sound, picture and text carriers for whom it can be assumed to be used for private copying. Right to remuneration for private copying can be exercised only through the collective management organizations.

As for the transfer of economic rights, Law on Copyright and Related Rights provides that once a performer consented to a producer of videograms his right to rent the recordings of his performance, he retains the right to receive an equitable remuneration for the rental of the recording of his performance. Moreover, unless the contract between the performer and film producer does not specify otherwise, it shall be deemed that the performer has licensed the producer the right to rent copies of the performance.

Law on Copyright and Related Rights does not grant to the performers of audiovisual performances broadcasting or rebroadcasting rights of their recorded performances, neither the right of communication to the public of their recorded performances, nor the right of communication to the public of their performance which is broadcasted from audiovisual carrier.

The term of protection of the economic rights of the performer is 50 years from the date of the performance. If the performance was recorded and lawfully published or communicated to the public within the mentioned period of 50 years, the term of protection shall expire 50 years from the date of the first publication or communication to the public of the performance, whichever date is earlier. Performer's moral rights last even after the expiration of his economic rights.

The Draft Law on the Amendments of the Law on Copyright and Related Rights for which the procedure in Serbian government has been started shall provide performers of audiovisual performances with a new economic rights: the right of broadcasting and rebroadcasting recorded performance, the right of communication to the public recorded performance and the right of communication to the public performance which is broadcast from audiovisual carrier.