

# The Property Rights of the Author according to the Law on Copyright and Related Rights of the Republic of Kosovo

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## Abstract

Copyright, for a long time has not been regulated or protected at the desired level. The right on intellectual property, as a right of a particular kind and as the right of non-material property, is of particular importance for the contemporary reality.

The copyright, in its content, enjoys the rights of personal and property nature. The natural rights, for a long time, have been characterized as very personal rights that relate to the creator of the work itself. This has probably been because in the early times it was impossible the multiplication of the author's work because the handwriting of the work has been a rare process and difficult. Later, with the invention of the typing machine, it was noticed that the works can be easily multiplied, as such came the need to protect the authors and their rights by providing to the authors reward in the case when their work is violated.

Property rights are inseparable rights for the authors, which often serve also as stimulus for the creation of new works, but also provide reward for the effort given on the creation of the work.

Law on Copyright of the Republic of Kosovo is in accordance with the rules of the European Union, but the judicial practice is not in accordance with the Law. This happens because in the reality, the property rights and the

moral rights are subject to violations, and as a result is violated even one of the primary and contemporary goals: the law should serve as an incentive for the authors to write and on the other side to satisfy the public with the scientific works.

As such, the research objective of this paper is to present the property rights of copyright, the basics of the transfer of these rights, studied also at the comparative aspect.

**Key Words:** Author, content of the Property Rights, Law on Copyrights and Related Rights, Publication Contract

## 1. The content of Copyright

The subjective right of the author presents a unique right, which contains two kinds of authorizations: the moral and the property authorizations, which together serve for the protection of the personal and material interests of the author<sup>1</sup>. With the creation of a specific work, the author is guaranteed the protection of moral rights and the advantage of the economic rights for the created work. These rights are protected by national and international laws and are the exclusive rights of the author. According to Article 6 of the Law on Copyright and Related Rights (hereinafter mentioned as LCRR): "*The copyright is an inseparable right of a work, which belongs to the author as a subject of an intellectual property for the protected work*"<sup>2</sup>.

The content of the Copyright consists of<sup>3</sup>:

- a) *personal exclusive authorisations to protect the invulnerability of a work of an author and his/her personality, (referred hereinafter as moral rights);*
- a) *exclusive property authorisations to protect the property interests of the author (referred hereinafter as property rights);*
- b) *other author's authorizations (referred hereinafter as other rights of the author).*

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<sup>1</sup> Aliu, A., (2004), "*E drejta e Autorit (Copyright)*", Authorized Lectures, Prishtina, p.22.

<sup>2</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 6.

<sup>3</sup> Ibid, Article 6.

Copyright guaranties to its holder the provision of property and moral rights, where the right holder has the right of ownership and as such he can possess his work, can use it as well as can dispose the personal and legal property right.

Universal Declaration of Human Rights, in its Article 27.2, specifies that: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author"<sup>4</sup>. The author, as the creator of the work, based on the theory of copyright ownership, has the absolute and the exclusive right of ownership. The theory of ownership on copyright, considering that the idea included in the work belongs to the author, with the publication of the work the author exclusively has the absolute right in the form in which the ideas are expressed<sup>5</sup>.

The right requires that the creator be granted the right on what he has created, with which he has enriched the social community, because he has the natural right on the product of his intellect<sup>6</sup>. Creativity of a person is valuable for the development of the society. Therefore the work of the author must be protected and the authors should be stimulated to create great works which are needed for the establishment and the development of a society. The talent and knowledge should be protected with copyright in all dimensions and with a very special seriousness, because we know that the development of technology more and more raises the difficulty for copyright protection.

### 1.1. The property (economic) rights of the author

It is known, that many authors have written in special moments during their lives, in the moment of inspiration, grief or joy. But one thing is certain, that in the modern world, these are not the only incentives to write, except the internal incentives are needed also the property benefits that derive from the writing of a scientific work, art work, etc.

Therefore, the writing of scholarly works requires study and a stimulating environment for property remuneration. In this way, the main reasoning for the issue of the Law on Copyright has been divided into economic and ethical reasoning. The economic reasoning, as we have already mentioned, is represented in Anglo-Saxon system, as one of the

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<sup>4</sup> United Nations, (1948), "Universal Declaration of Human Rights", Article 27.2.

<sup>5</sup> Aliu, A., (2004), "E drejta e Autorit (Copyright)", Authorized Lectures, Prishtina, p.21.

<sup>6</sup> Ibid, p.21.

reasons to simulate the author to write and to be compensated for the written work. On the other hand, we find also the ethical reasoning that is more represented in the French right, according to which as every theft that is penalized according to criminal norms also the copyright should enjoy protection because the author must be ensured that his/her intellectual creation will not be subject of violation or subject of unconscious use<sup>7</sup>.

The property rights of the Copyright are special rights that belong to the group of rights that can be transferred, unlike the moral rights that cannot be transferred from one right holder to the other. With property rights (economic rights) of the authors, is meant the reward of the authors for his creative work and for the creativity and dedication put on the work for a certain period of time. For this period of time, the author has the right to prevent all the actions that relate to the property rights.

In this way, the Article 21 of the LCRR is stated: *"The author holds the exclusive right to property use of his work in any form. The author of a literary, artistic or scientific work shall be entitled to remuneration for any type of occasion and for any type of use of his work, authorized or not by the author, even if he waives from that right"*<sup>8</sup>

The copyright is the exclusive and absolute right of the author. "The absolute character of the copyright consists on that, that the author can stop the way of use of the work for which he did not give consent, regardless of who used the work"<sup>9</sup>.

In this way, it is also determines in the Law on Copyright in Albania (hereinafter referred as LCRRA<sup>10</sup>, according to which: *"The author enjoys the exclusive right of exploitation over his work in any form and way. The author of a literary, artistic or scientific work, enjoys the right of remuneration in any case and any way of the exploitation of the work, authorized or not by himself, even if he waives this right"*<sup>11</sup>. The property rights enable the right holder to use the work in three forms: *use of work in thematic form* (the right for reproduction, the right of distribution, the right for leasing), *the use of work through non*

<sup>7</sup> Plakolli- Kasumi, L, (2009), *"Të drejtat e Autorit dhe të drejtat e Përafërta (Copyright and Related Rights)"*, USAID, Prishtina, Module 3, p. 2.

<sup>8</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 21.

<sup>9</sup> Aliu, A., (2004), *"E drejta e Autorit (Copyright)"*, Authorized Lectures, Prishtina, p. 38.

<sup>10</sup> Republic of Albania, Law No. 9380 on Copyright and Related Rights, date: 28.04.2005, hereinafter referred as LCRRA.

<sup>11</sup> For more see: Republic of Albania, Law No. 9380 on Copyright and Related Rights, date: 28.04. 2005, Article 12.

*thematic form* (the right for public interpretation, the right for public communication, the right for public communication through phonograms or videograms, the right for public broadcasting), *or the use of work in modified form* (the right to public disclosure, broadcast and rebroadcast of audiovisual program content, encoded programs, the right of secondary broadcasting, the right of making the work available to the public, the use of the work in modified forms).

Unlike the moral rights, which are rights bound to the author, the property rights represent rights that can be transferred, thus enable the author to transfer the property rights from one holder to the other right holder. The transfer of rights is made while the author is still alive or with a will after his death. The transfer is valid for a limited period of time and during this time these values are materialized, so for the use of rights is paid a compensation. The absolute character of copyright, enables the author with the right to use the work and all the others to respect it, and then obligates all other to respect the copyright.

## **1.2. The Right for Use of the Work**

Exactly in the right for the use of the author's work is presented the property component of the authorship. In the first place, the use of work corresponds with<sup>12</sup>:

- The Right of Reproduction;
- The Right of Distribution; and
- The Right of Leasing.

### **1.2.1. The Right for Reproduction**

According to LCRRK, in Article 23 is stated: "*The right for reproduction is an author's exclusive right to authorize or prohibit fixation of his work or copies of work in thematic carrier made directly or indirectly, temporary or permanently, in any mode or form, entirely or partially regardless the number of copies*"<sup>13</sup>.

First fully, the right for reproduction means the presentation of the work in *hard copy* (printed copy), in order for the reader to perceive or understand what the author has expressed. Therefore, this presents a physical- printed copy. In addition to the printed copies of the work, a

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<sup>12</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 22.

<sup>13</sup> Ibid. Article 23.

work may be copied also electronically. Especially in modern reality, the technological innovations represent the main factor for many developments. We can freely say that the copy of a work, creativity, in an electronic form is highly widespread and this automatically means also the material copy of the work. Copying of songs, photos, texts and all other materials that enjoy protection but are downloaded from the internet without the upfront permission of the author, is automatically a violation of copyright and violation of the right for the reproduction of the work<sup>14</sup>.

### 1.2.2. The Right of Distribution

The right on intellectual property, as a personal and exclusive right and with absolute character, is best transmitted when the author decides by himself whether he/she wants to allow or to prohibit the circulation of his/her original work. Only with the authorization from the author can be made the distribution of the work either through sale, transfer of ownership or through offering of the work to the public for some other purpose. In this way, the LCRRK through its Article 24 determines that: *"The right of distribution is an exclusive right of the author to authorize or to prohibit the putting into circulation the original or copies of his work, by sale or any other form of transfer of ownership, including their offering to the public for such purpose"*<sup>15</sup>.

The creator of the work owns the exclusive rights for the selling or for the import of the created work. The creator can also set the price of the work in another country, since such an action enable the right holder to generate incomes in a form of a business. The *"distribution of the work"* is the *availability of the original or copied work to the public through selling, donation, inheritance, lending or renting*<sup>16</sup>. Also, LCRRK in Article 14 gives to the right holder the exclusive right for the first distribution by exhausting in this way this right, if the author has transferred that right to other persons. *"The distribution right is exhausted on the original work or on its copy, when this right is exercised by its right holder or by his consent through the first sale or by any*

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<sup>14</sup> For more see: Koçi, E., (2003), *"Pronësia intelektuale (Intellectual Property)"*, Tirana, p. 31.

<sup>15</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 24.

<sup>16</sup> Republic of Albania, Law No. 9380 on Copyright and Related Rights, date: 28.04. 2005, Article 4.

*other means of ownership transfer, and only if these acts divest him of the right of redistribution of the work in continuance and of the rental right”<sup>17</sup>.*

### **1.2.3. The Right for Leasing**

One of the other forms for material use of the author’s work is through the authorization of the owner of the work. Meaning that, the original work or its copies can be transferred for use to other parties for a limited period of time and from this transfer the author to generate direct or indirect economic profit<sup>18</sup>. Transfer for use, represents the temporary transfer of the use by the author to the interpreter such as to the producers of phonogram, producers of cinematographic works, producers of audiovisual works or any other sequences that have moving scenes. However, this transfer must be made always on the basis of direct or indirect property compensations.

LCRRS ensures to the author that this transfer must provide to him greater economic benefits compared to the costs of transfer, done through leasing (rent) or lending. From here, we can observe that the Albanian legislation on Copyright completes the material use through lease with another form of use which is lending<sup>19</sup>. In addition, also our legislation makes sure not to allow any form of leasing, by limiting this right for: architectural work, the original or copies of works from applied art and industrial design, work in case of spot reference, the original or its copies in institutional spaces<sup>20</sup>.

### **1.3. Use of Work in Non-Thematic Form**

Besides the thematic use of the work, as main and the most important form for the use of the property, also exists another form for the use of these executive rights, which is the non-thematic form. The non-thematic form for the use of the work appears in the ways of: public interpretation, public communication, public communication through phonograms or videograms, public disclosure, broadcast and rebroadcast of audiovisual

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<sup>17</sup> Ibid, Article 14.

<sup>18</sup> For more see: Republic of Albania, Law No. 9380 on Copyright and Related Rights, date: 28.04. 2005, Article 4, point 40: “Rental of a work means making available for use of the original or copied works, for a limited time of period and for direct or indirect economic or commercial profit”.

<sup>19</sup> Republic of Albania, Law No. 9380 on Copyright and Related Rights, date: 28.04.2005, Article 4, point 42.

<sup>20</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 25.2.

program content, encoded programs, secondary broadcasting. These will be the subject of fundamental analysis below.

### 1.3.1. The right for public interpretation

As a personal and exclusive right, the right to interpret the content of the work belongs to the author. The author knows best the content and the meaning of what he wanted to express in his work. But this personal right, with property effect, can be transferred from one holder to another right holder, which I believe is very reasonable, because the content of the work must be interpreted by entities that possess the professional skills to implement it. This transfer enables also economic benefit to the author. As such LCRRK, in its Article 26 provides that "*The right for public interpretation is an exclusive right of the author to authorise or prohibit the public reciting, public musical interpretation, or public disclosure of his work. The right for public reciting is the right of communicating the written or verbal works through reciting or reading directly to public*<sup>21</sup>". The right for public interpretation is considered as such when is done in front of a large public and not in the presence of close members of family or friends<sup>22</sup>. The performance is done always through cable or satellite tools.

### 1.3.2. The right for public communication

The interpretation of the work, as we have mentioned above is not made in front of close family members or close friends but is done in front of a wide range of people or in front of close people but which to the public are communicated in the form of sounds or images through tools such as cable, satellite, phone, and recently also with digital tools<sup>23</sup>. The right of public transmission can be authorized only from the author, in this way: "*The right for public communication is an exclusive right of the author to authorise or*

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<sup>21</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 26.

<sup>22</sup> For more see: Republic of Albania, Law No. 9380 on Copyright and Related Rights, date: 28.04. 2005, Article 16, point 2: "A communication which occurs within the close relatives and is not integrated nor connected with a diffusion network of any kind, is not considered as public communication".

<sup>23</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 4: "Communicator" means the natural or legal person who has editorial responsibility for the content of radio and television programming services that must be accepted by the general public in order to transmit, or if they have already been communicated, in whole and unchanged from the third party.

prohibit that the reciting, performance, or disclosure of his work are made available to public, abroad or outside source space, through loudspeaker, screen or similar device”<sup>24</sup>.

Such regulations of the LCRRK, which is in accordance with the Berne Convention, gives to the author the exclusive right to communicate to the public his work. Theatrical works represent works that appear in scenic and not scenic way through radio or television without the permission of the author, and in this way they violate the property rights of the author, for which the author has the right to seek judicial protection<sup>25</sup>.

### **1.3.3. The right for public communication through phonograms or videograms**

The voice sequences and photographs are communicated to the public through other forms which are through Phonogram and Videogram. **Phonogram** means “the recording of sounds of a performance or of other sounds, or of a representation of sounds, on a sound carrier, other than a soundtrack incorporated in an audiovisual work”. **Videogram** means “the recording of an audiovisual work or of a sequence of pictures with or without the accompanying sound on a picture or a picture and sound carrier”<sup>26</sup>.

The right of their communication, is provided also to the author as his exclusive right with economic effects, as mentioned in Article 28 of LCRRK: “The right to public broadcasting through phonograms and videograms is an exclusive right of the author to authorise or prohibit that his work be fixed into phonogram or videogram is communicated to public through technical devices or audiovisual reproduction”<sup>27</sup>.

### **1.3.4. The right to public disclosure**

The author basically creates the work in order to present it to the public, in order to enrich the public with new knowledge. The public is always understood as a greater number of people who are able to see the work of the author through hard copy form, audio-visual form, or in the

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<sup>24</sup> Ibid. Article 27.

<sup>25</sup> Alishani, A., (2006), “Studime nga e Drejta e Detyrimeve III (Studies from the Right of Obligations III), Prishtina, p. 163.

<sup>26</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 4.

<sup>27</sup> Ibid, Article 28.

photographic or figurative form or in other form in order to have the opportunity to be familiarized with the content of the work of the author.

Also the right for public disclosure is a personal, property and exclusive right of the author, because the author is the most competent person to decide if his work is to be seen and evaluated by the public. The work presented in the public, constitutes only personal wealth and becomes valuable when it is presented to the public, when it is cited and interpreted in the public. Like any other right which is in accordance with the European Legislation, the right to public disclosure in Article 29 of LCRRK foresees that: *“The right to public disclosure is an exclusive right of the author to authorise or prohibit, the communication to the public of his audiovisual work, photography, figurative works, the works of applicative arts and industrial design, choreographic works and scientific or technical presentations, by technical devices”*<sup>28</sup>.

### **1.3.5. Broadcast and Rebroadcast of audiovisual program content**

"Broadcasting" is the first land transmitters of program services, with cables or satellites in encrypted or in unencrypted forms, which is for the general public<sup>29</sup>.

Tools such as cables, satellites, and recently also digital equipment are the main informants for any data and activity, but especially for the transmission of creations called copyright in public in audiovisual way. In order this right to be protected in a proper form, it is also included in LCRRK in Article 30.1, as: *“Audiovisual media services licensed by the Independent Media Commission - IMC as well as cable operators and other operators that regardless of technology they use, offer audiovisual content, are obliged to broadcast and rebroadcast programs based on valid copyright agreements”*<sup>30</sup>.

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<sup>28</sup> Ibid, Article 29.

<sup>29</sup> Satellite communication is an artificial earth satellite which receives a communication signal from a transmitter in the ground station, amplifies and possibly processes, then transmits it back to earth which receives one or more stations on the ground. Commercial communications satellite industry has its origin in the mid-1960s and in less than 50 years has progressed from an alternative technology to a main transmission technology. For more details see: John.G.Proakis,"Wiley encyclopedia of telecommunications" John Wiley&Sons, INC, Hoboken, New Jersey.

<sup>30</sup> Assembly of Kosovo, Law No. 02/L-15 on the Independent Media Commission and Broadcasting, date: 30.05.2007; Article 2.2: *“The IMC is a body that is independent of any political influence, of whatever type it may be, in order to take over its responsibilities and*

In this way, in the Office for Copyrights, are registered agreements for audiovisual transmission, a registration that enables broadcasters to earn the right to license in this way as mentioned in Article 30.2 of LCRRK's: "Copyright agreement dealing with the broadcast and rebroadcast of audiovisual programs will be valid only after they have been registered by the collective associations licensed by the Office for copyright in the Ministry of Culture, in accordance with the Article 171 of this Law".

### **1.3.6. Encoded Programs**

Encoded programs represent those signals which are encoded/encrypted to the public, either through satellite or other platforms, thus Article 31 of LCRRK determines: "*If the signals that carry programs are encoded/encrypted, communication to the public by the satellite or other platforms is performed with the condition that means for decoding of the transmission/broadcast are provided to the public by the audiovisual media service or with his approval/consent*"<sup>31</sup>.

### **1.3.7. The right on secondary broadcasting**

Another way for non-thematic use of the author's work, is the communication of a work to the public by loudspeaker, screen or other similar means, thus, LCRRK provides to the author this exclusive right in Article 32: "*The right of secondary broadcasting is the exclusive right of the author to authorize or to prohibit the communication to the public of a broadcast work or a work made available to the public, by a loudspeaker, screen or similar device*"<sup>32</sup>.

### **1.3.8. The right of making the work available to public**

Another exclusive right of the author is to make the work available to the public through linear and non-linear communication. These forms of presentation are called multimedia presentation. Multimedia, in general, can be divided into linear multimedia linear and non-linear multimedia<sup>33</sup>.

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functions determined by this Law or other applicable laws in Kosovo in compliance with Article 11.1(e) of the Constitutional Framework".

<sup>31</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 31.

<sup>32</sup> Ibid, Article 32.

<sup>33</sup> Multimedia, (lat.: Multum + Medium) is the kind of media that uses multiple forms of information and processing the information, text, sound, graphics, video, animation,

Linear multimedia introduces cinematic presentation, which presentation does not own supervising tools over public oversight and non-linear multimedia, as computer interactive form, requires the opposite of linear multimedia that is interactivity with the public supervision. Based on this LDK, Article 33 provides the author this exclusive right, in this order: *“The right of making the work available to public is an exclusive right of the author to authorise or prohibit that his work is made available to public through linear and nonlinear communication, in a way which enables access to individuals from place and time they choose”*<sup>34</sup>.

#### **1.4. Use of Work in Modified Form**

The work of the author, as per the social and personal importance, can be used in different ways, starting from the thematic use, to the non-thematic use and to the modified use. The modified use of the work, allows to the author to use his work in the form of reproduction and in the form of audiovisual adaptation.

##### **1.4.1. The right of reproduction**

The right of reproduction in its self represents a right with a wide content that includes the right of translation, musical adaptation, etc.

In this way, the right of translation cannot be done without the permission of the author. In our daily life, we often note unauthorized translations, actions that violate the copyright, which then allow the author to be object of a dispute in Court. On the other hand, the right of reproduction, presents an exclusive right to the author, that authors always give it for a small amount of compensation because enables his work to cross national borders<sup>35</sup>.

Besides translation, the author can make the adaptation of the work, adjustments and transformations. These changes can be implemented only after he has received authorization from the original author, with a condition that also this work to be protected in those parts that are original compared with the first work. This form of adaptations, allows the authors

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interactivity, to inform or entertain the user, the audience. For more details see: ACM Multimedia

<sup>34</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 33.

<sup>35</sup> Koçi, E., (2003), *“Pronësia intelektuale (Intellectual Property)”*, Tirana, p. 32.

to show their work in a more explorative way, which allows the authors to have economic benefits<sup>36</sup>.

LCRRK in its Article 34, determines that: *“The right of reproduction is the right of an author to authorise or prohibit the translation, scenic adaptation, musical adaptation or processing of his work in other ways with the purpose of creating a derived work, the author of source work holds the exclusive right for the processed version, if not otherwise provided by this law or contract”*<sup>37</sup>.

#### **1.4.2. The right for audiovisual adaptation**

*“Audiovisual media service - Service which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programs in order to inform, entertain or educate, the general public by electronic communications networks”*<sup>38</sup>.

The audiovisual adaptation, presents as well an executive right to the author, which can be adapted or allowed only with the permission of the author. LCRRK in Article 34.2, foresees that: *“The right of audiovisual adaptation is an exclusive right of the author to authorise or prohibit that his work is adapted or used to be fixated into an audiovisual work”*<sup>39</sup>

## **2. Transfer of Author’s Rights**

The author’s authorizations for his work are of personal, moral and property (economic) nature. The moral rights, as exclusively the personal right, cannot be transferred to another person as regulated in the Article 65 of LCRRK, *“The author cannot transfer his moral rights to another person”*<sup>40</sup>.

Who can transfer the copyright? As the holder of property rights, the author is the first competent holder and can transfer the economic values to other holders. After the first transfer, this right can be transferred also to other subject as indicated in LCRRK in its article 68.1 and 2: *“The author is the first holder of all property rights and other rights related to his work. Except the author, the right holder from paragraph 1 of this Article can be also natural*

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<sup>36</sup> Ibid, p. 33.

<sup>37</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 34- 1.1.1.

<sup>38</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 4.1.

<sup>39</sup> Ibid, Article 34.2.

<sup>40</sup> Ibid, Article 65.

person or legal entity to whom these rights are assigned on legal basis or by legal actions"<sup>41</sup>.

In order that the beneficiary of the rights of intellectual property to acquire the right without any legal concern from the author, is best that he already to be known personally with the author, because the author is the only one who has the authority to transfer the copyright.

It is very natural that the data for the author to be found in his work, but the Office for Copyright is competent and responsible to register these data in correct ways, which then serve for more secure transfer of the intellectual property rights. The Office for Copyright, for a long time was not functional and as a result many violations of copyrights have happened, especially in the sphere of music. But, fortunately, in the Ministry of Culture, Youth and Sport in Kosovo, the Office for Copyright has opened, as a competent body to register these correct data and which then surely will contribute to a more secure transfers of the copyrights.

The author and the holder, to whom the property rights have been passed, win the judicial ownership of the property rights of the work and also the rights to implements their interest in the Courts.

## **2.1. Publishing Contract**

One of the main authorization for the author, is the right to present his work in the public, so the rights on publishing of the work. Few years ago, when the photocopy machine did not exist, the publication of the work was hard because only the author had this right. While now, with the photocopy machines, the publication of the original content of the work is easier and faster. The right on publishing includes the transfer of the authorization from the author to the publisher to multiply or to even distribute the content of the author's work. So the contract on publishing is, as stipulated in Article 88.1 of LCRRK: *"By concluding a publishing contract the author will assign the right to the publisher to reproduce his work by printing and the right for distribution of copies of work, and the publisher takes the responsibility of reproducing and distributing the work and pay the remuneration to the author thereof"*<sup>42</sup>.

The process of publishing includes many phases, and all these phases should be completed from the publisher, always with the authorization of

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<sup>41</sup> Ibid, Article 68.1 and 68.2.

<sup>42</sup> Ibid, Article 88.

the authors, such as: the signing of the publishing contract, editing, design, printing, marketing, and in the cases includes also distribution for newspapers/journals and musical works. As can be seen, the process of publishing is not that easy, because it requires very detailed organization which can be also done by the author himself<sup>43</sup>. The publishing contract, has existed also in the times of old rules, even though not so much elaborated in the roman rights and neither in the feudal rights, but they have been found more as contractual rights <sup>44</sup>.

The conditions needed for the signing of the publishing contract are primarily, the ownership of the work, the thematic content of the contract and the form. For the ownership of the work has been spoken above. The contractual parties must be equal, as one of the basic principles of the contracting freedom. It should be also mentioned, that the contract on publishing presents a contract with mutual benefit, a contract with name, a contract with permanent prestige, a cumulative contract, a simple contract and also is presented as an adhesive contract because the author does all the preliminary preparation while the publisher only accepts the work for publishing <sup>45</sup>.

On the other hand, the content of the contract as a general condition and also as a fundamental element for the validation of the contract of the work, is: the handing over of the original work (manuscript) and its acceptance from the publisher, the term within which the author is obliged to hand over to the publisher the manuscript or other copies of work, to enable the publication (which should be no longer than one year from the time when the contract was concluded) and also the term within which the publisher is obliged to release the copies for the market (this also cannot be longer than one year from the day of receipt of manuscript or copies of work). Also should be specified the number of publications which the publisher is authorised to release, the obligation to return the original manuscript to the authors, the destruction of the unsold copies, the format of the paper, diagrams, photographs, etc <sup>46</sup>.

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<sup>43</sup>Alishani, A., (2006), "*Studime nga e Drejta e Detyrimeve III (Studies from the Right of Obligations III)*", Prishtina, p. 267.

<sup>44</sup> Ibid, p. 277.

<sup>45</sup> Ibid, p. 268.

<sup>46</sup>Plakolli- Kasumi, L., (2009), "*Të drejtat e Autorit dhe të drejtat e Përafërta (Copyright and Related Rights)*", USAID, Prishtina, Module 6, p. 6.

The volume of the transfer right from the author to the publisher, is determined as a fundamental element in the contractual relationship. The author can transfer his rights to the publisher either partially or fully, as such both the author and the publisher should pay to this part a particular attention because often this issue is subject of dispute between the parties. Another element that should be precisely determined in the contract is the time length of these rights, which is usually up to five years. Regarding the deadline, the publisher should also be careful for the work to be published in the terms determined in the contract which is usually from six months to one year. This is a reasonable deadline which many times is violated by the publisher and which then damages the author a lot because the publication of the work is supposed to be beneficial to the population as a cultural and civilization value<sup>47</sup>.

Compensation is also another important element of the publishing contract, which can be set in various forms such as: a percentage, a lump sum, or for any copies sold<sup>48</sup>. The reward for the author always depends upon several factors, such as: the environment that surrounds the author, the level of development, social organization, the importance of work etc. But the author has the right to waive from the entitled reward<sup>49</sup>.

Another important element is also the number of copies –edition, which in LCRRK, Article 89.2.3 stipulates: *“If the royalties are fixed as a percentage of the retail price of the copies sold, the publishing contract must specify the number of the copies of the first edition. If this number is not specified, it shall be presumed that the work is published in at least 5000 copies. If compensation is set in fixed rate, the contract shall specify the total printing of copies to be published. If this is not provided by or does not result from the purpose of contract, professional habits and other circumstances, the publisher can reproduce and distribute up to five hundred (500) copies”*<sup>50</sup>.

The publisher and the author should cooperate during all the phases of the publication process of the work, from the correction up to reprint. From

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Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 89.

<sup>47</sup> Alishani, A., (2006), *“Studime nga e Drejta e Detyrimeve III (Studies from the Right of Obligations III)”*, Prishtina, p. 293.

<sup>48</sup> Aliu, A., (2004), *“E drejta e Autorit (Copyright)”*, Authorized Lectures, Prishtina, p. 51.

<sup>49</sup> Alishani, A., (2006), *“Studime nga e Drejta e Detyrimeve III (Studies from the Right of Obligations III)”*, Prishtina, p. 299.

<sup>50</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 89.2.3.

this, the publisher has as a legal obligation to sell the copies and to inform the author upon his request.

With the conclusion of the contract on publishing, lay the effects between the publisher and the author that relate with their rights and obligations. The main obligation of the author is to hand over the manuscript to the publisher, which should be handed with no physical or legal shortages. On the other hand, the publisher's right in this case represents the handing over of authorization from the author to the publisher to publish the work and as obligation appear the publication of the work, the term, the manner, the number of copies as per the request of the authors and the payment of remuneration to the author<sup>51</sup>.

Book publishers may reserve for themselves the right of priority, to publish it electronically. The publisher also must return to the author, the number of copies that were not sold, or if the publisher wants to use those unsold copies for old papers, also in this case the publisher shall require authorization from the author, otherwise it is violation of the publishing contract. This is stipulated in Article 93 of the LCRRK, "*If the publisher aims to sell the unsold copies of work as an old paper, he is obliged to offer it first to the author, according to the price for simple paper*"<sup>52</sup>.

In the case of *force majeure*, as one of the events that exempts the debtor from liability, in this case does not have any value, because if this power has exterminated the work of the author, it does not release him from the responsibility, but forces to compensate the damage to the author.

Like any agreement established between the parties for the creation of the subjective rights but also of their modifications, it may be terminated. The contract on publication can end as a result of: the author's death before the end of the work, if all the copies of the edition are sold, if the terms of the contract have expired, and if the annulling of the contract is done in accordance with the Law on Obligations<sup>53</sup>.

The contract on publishing and related law case, as a result of the publishing contract, usually disputes appear for the reward the author, for the translators' rights for reward, the manner of publication, for the term, and also for the number of copies- edition. Despite these, the publishing

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<sup>51</sup> Alishani, A., (2006), "*Studime nga e Drejta e Detyrimeve III (Studies from the Right of Obligations III)*", Prishtina, p. 305.

<sup>52</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 93.

<sup>53</sup> *Ibid*, Article 95.

contract, presents a very important contract for legal circulation, because it represents the legal remedy or the legal instrument, by which circulate the property rights of the author, but also is recognized or published works on a larger scale and in this way in favour of enriching people with new knowledge from the fields of literature, art and science. But entering into a contract on publication brings to the author incomes and thus encourages a creative environment.

## 2.2. The contract on presentation and interpretation

A category of author's work, are designed to be presented in public through interpretation. Interpretation is required for musical works, theatrical, theatrical-musical, theatrical director, choreography, scenography and costumography<sup>54</sup>. Once these works were supposedly created to be presented in the public through interpreters, the contract on presentation and interpretation represents the assignment of the work from the author to the interpreter, as the obliged person to present the work in public. As per article 97 of the LDK, *"The contract on presentation respectively interpretation of author's work shall specify the right of the user to present respectively to perform publicly his work, and the user takes the responsibility that such work is publicly interpreted within the specified term, according to the way and conditions provided by contract and pay the compensation to the author"*<sup>55</sup>.

The contract of presentation and interpretation is of complex nature. As a result, there is the need to include other bodies and there is also the need to have the cooperation between the author and interpreters. This enables the author to follow the presentation and the interpretation of his work, which makes the author to get knowledge from the technical equipments up to the revenues that are made from the presentation<sup>56</sup>.

Besides the timeline and the conditions of the presentation and interpretation, are set also the location of the presentation and of course the compensation for the author<sup>57</sup>. Like any other contract, also this contract is

<sup>54</sup> Plakolli-Kasumi, L, (2009), *"Të drejtat e Autorit dhe të drejtat e Përafërta (Copyright and Related Rights)"*, USAID, Prishtina, Module 6, p. 6.

<sup>55</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 97.

<sup>56</sup> Plakolli-Kasumi, L, (2009), *"Të drejtat e Autorit dhe të drejtat e Përafërta (Copyright and Related Rights)"*, USAID, Prishtina, Module 6, p. 7.

<sup>57</sup> Aliu, A. (2004), *"E drejta e Autorit (Authorized Lectures)"*, Prishtina, p. 51.

terminated as a result of its failure, violation of the provisions on the deadline, among others. Always, at the end, the interpreter shall return the original work to the author.

LCRRA, differently from LCRRK, foresees the term of the beginning of this right after its registration in the Albanian Office for the Copyrights, in this way: Article 47. 2. *“The contract of the theatrical and/or musical performance mentioned in paragraph 1 of this law, is valid and originates the effects only after the registration and certification by the Albanian Office for the Copyrights, and expires after the termination of the term for which an agreement has been reached”*<sup>58</sup>.

### 2.3. The contract on work processing

The process of the work, presents a wider authorization, which enables the work to be translated, to have audiovisual adaptation, scenic adaptation, as best methods and as most productive methods for the usage of the author’s work. In this way, as any other personal rights of the author, also this right authorizes the author to assign his work to the processor of his work. Article 104 of LCRRK: *“By the contract on work processing of the author, the author assigns the right for his work to be published in the mode of scenic adaptation, audiovisual adaptation or of other modes of use of work in modified form”*<sup>59</sup>.

This modified work is also called as derived work. The processing made by the author, after receiving his authorization, is considered to be entitled to the right on derivated work.

Like any other contract, also the contract on work processing must meet the general conditions of contract and special rights, such as: translation of the work which must be processed through translation, the manner and purpose of processing, if there are reserved rights, their presentation, terms, as well as the important element of the compensation for the work<sup>60</sup>.

The amount of compensation is determined in accordance with the applicable rules of law and taking into account other elements that are determined by the author of the work.

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<sup>58</sup> Republic of Albania, Law No. 9380 on Copyright and Related Rights, date: 28.04.2005, Article 47, point 2.

<sup>59</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 104.

<sup>60</sup> Plakolli-Kasumi, L., (2009), *“Të drejtat e Autorit dhe të drejtat e Përafërta (Copyright and Related Rights)”*, USAID, Prishtina, Module 6, p. 7.

#### 2.4. The contract on request of author's work

A good method or a good incentive for the creation of works in the field of art and science is to enter into the contract for the request of the work. Through this contract, the requester, by reserving to himself the right of distribution and publication, requires from the author the writing or the creation of the work in the field of art or science, being understandable that the author is always independent in his scientific work.

Like any other contract, also in the contract on the request of author's work should possess the general conditions determined in the LCRRK. In this way, it must contain the names of the parties, the content of the requested work, time to deliver the work to the requestor, cited materials, among others. However, above all, the contract should also indicate the guarantee that the work will be original, without prejudice to any other rights of intellectual property. Compensation is also another necessary element, because it serves as an incentive for the author to perform in the best way the requested work. LCRRK, in Article 105. 1 mentions: "Through the contract for requesting the author's work, the author takes the obligation to create for the requester an author's work and to submit to him the original or copy of work, and the requester is obliged to pay remuneration to the author"<sup>61</sup>.

This contract is often confused with the work created as a result of the working relationship (Article 126 of LCRRK). Both are established with the request, but have distinctive elements. As such, the work created during the working relationship is the work that provides to the author only moral rights, and on the other hand, provides economic rights to the employers, within ten years. The opposite of the author's work from working relationship, is the contract on request of author's work, because the author in this case is independent and enjoys the moral and economic rights, where the requester, based on this, has only the right for publication and distribution<sup>62</sup>.

#### 2.5. Contract of collective works of the author

Computer programs, databases, encyclopaedias, periodical journals, among others, as more difficult and complicated programs and presentations, require the cooperation of a number of authors, who on the

<sup>61</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 105.1.

<sup>62</sup> Plakolli-Kasumi, L., (2009), "Të drejtat e Autorit dhe të drejtat e Përafërta (Copyright and Related Rights)", USAID, Prishtina, Module 6, p. 8.

basis of their contribution are entitled to share their moral rights<sup>63</sup>. Even this contract, as the contract on request of author's work, is concluded between the co-authors and the requestor of the work. The last one provides to themselves the economic rights and gives authorization to the co-authors to divide the compensation and moral rights on the basis of their contribution. LCRRK in Article 106. 1 stipulates; *"The collective work of authors is the work created in cooperation of several authors, by combining their contribution separately into a work such as: encyclopaedias, lexicons, database, computer programs, collections and other similar works, with the initiative and guidance of a natural person or legal entity as a requester of work"*<sup>64</sup>.

The requestor, reserves the right to present the work in his name, but should always mention the names of the contributors. According to Article 106. 4 of LCRRK: *"The requester of collective work of author enjoys the right to publish and use the work under his own name, however in each copy of work the list of participating authors shall be placed"*<sup>65</sup>.

### **3. Conclusion and Recommendations**

The Right on Intellectual Property presents a right of special importance for every society. The education of new generations and the enrichment of the citizens with new knowledge provided by the works of the authors is one of the most important public goals. Therefore, the copyright in addition to presenting a personal right for the author it also represents a right that conducts even more goals from the field of politics, economics, fiscal policies and also from the field of public safety.

However, Kosovo thankfully has passed the Law on Copyright and Related Rights, a positive law in Kosovo, which is in accordance with international conventions and the right of the European Union. This law provides to the author the rights that belong to the authors and provides protections from any violations, thereby creating a favourable environment and incentives to create original works that satisfy the needs of the public for authors' works.

The creation of legal base enables to the right holder, the enjoyment of moral and property rights. Moral rights are not transferable and they are

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<sup>63</sup> Ibid. p. 8.

<sup>64</sup> Assembly of Kosovo, Law No. 04/L-065 on Copyright and Related Rights, Official Gazette, No.27, date: 30.11.2011; Article 106.1.

<sup>65</sup> Ibid. Article 106.4.

not pre-prescribed and linked with the author. Meanwhile, the property rights of the author, which are subject of this study, are rights that push the author to create new works, to be rewarded for the efforts that they have made while creating the work, and also have the opportunity to transfer these rights without restriction to other holders, either when the author is still alive or even after the author's death.

Property rights in Kosovo, generally in the civil system, are more of secondary importance because the first importance is given to the moral rights. However, in the Anglo-American system the first priorities are given to the property rights which are called as *copyright*. The Law on Copyright and Related Rights is the law that in its content and in its comparative view possesses sufficient norms in order to ensure to the author property rights and also has sufficient basis for the transfer of rights. However, the practice has shown not a good harmony between the legal and judicial practice.

I believe that the author and the public would be cautious in the respect of property rights and to obtain fair compensation. This would happen if collective management would be professional and if the work of the Office for copyrights is more effective in the points that it has certified these managers regarding the information reports received from them. Kosovo's citizens, more than ever, need the author's work as a result of legislative political and economic changes etc. But also the author receives remuneration for the use of his work. As reward for the work of the author, to the author is primarily provided welfare, but also to the state of Kosovo is provided income. These records help in the advancement of the knowledge but also contribute to the increase of tax from the transfer of copyright.

From the practical aspect, the protection of copyright is considered not fully implemented. Therefore, much work is being done in order to apply the Law on Copyright and Related Rights in cooperation with the Task Force and Market Inspectorate who inspect the economic entities which deal with photocopying, multiplication of books, CDs, DVDs, etc., as well as economic entities that deal with the sale of these materials. From these results are taken seizure activities of goods and are taken sanctioning measures and are set judicial procedures. It is considered that from the measures taken, there have been improvements in respect to copyright and this process is ongoing. From these improvements are expected more successful results.

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