

Practical Considerations Regarding the Publishing of Musical Works and the Impact on the Publisher's Goodwill

PhD. student **Christine Giulia ABAZA**¹

Abstract

The reconfiguration of the music industry, driven by the evolution of how musical works are used, including the transition from physical unit distribution to digital exploitation, generates a corresponding evolution of the publisher's definition and its core role in the exploitation of these intellectual creations. The strategic positioning of these entities – between the author of the work and the multitude of commercial partners (record labels, digital platforms, broadcasting or television organizations) – is made possible by a complex legal instrument known as the „publishing contract”. This mechanism is situated at a normative intersection of interest from at least three branches of private law: Civil Law, Intellectual Property Law and Commercial Law. Through this study, we propose an analysis of the legal framework of the music publishing contract and the added value that these works bring to the publisher's goodwill, including an analysis of the specific practices within the Romanian music industry – a market in continuous evolution that aspires to the Western model. To achieve this objective, the research is grounded in a concise practical approach, utilizing research methods such as the comparative law method, to document international trends in approaching the legislative framework of the field; the logico-deductive method, as a reasoning instrument; the hermeneutic method of research and the sociological method, to evaluate the social impact of the analyzed regulations.

Keywords: civil law, publishing contract, intellectual creations, musical works.

JEL Classification: K12, K15

1. Introduction

The discrepancy between the traditional normative framework, anchored in Law no. 8/1996 on Copyright and Related Rights, and the new realities imposed by the digital economy, has caused an imbalance between the application of the classic legal instrument, namely the publishing contract, and the modern exploitation of musical works through digital methods. This *de facto* situation directly impacts the author's standing and the value of the rights protecting their creations.

Inasmuch as the main object of activity of a publisher is the utilization of works through the exercise of the economic rights of the author, these intangible assets are, as a rule, included in the publisher's legal goodwill (*fonds de commerce*). Consequently, the role of this entity is no longer, in the current legislative and economic context, that of a simple printer or distributor, but rather a veritable administrator of intangible assets.

Although the analysis of the publishing contract does not represent new doctrinal research, this present paper proposes an interdisciplinary analysis from a practical perspective, integrating high impact aspects of Commercial Law into the contractual exposition. Thus, we shall examine the object of the publishing contract not merely from the perspective of copyright as a simple object of obligation, but from the perspective of

¹ Christine Giulia Abaza - Faculty of Law, „Titu Maiorescu” University of Bucharest, Romania, abaza.giulia@yahoo.ro, ORCID: 0009-0004-5831-0316.

intangible assets with a valuation potential within the context of the publisher's legal goodwill.

To facilitate the comprehension of the subsequent analysis, we deem it necessary to expound upon the meaning of specific terms, upon whose knowledge and accuracy of interpretation of the legal provisions and the content of the legal relationship between the author and the publisher depends. Thus, we shall outline the distinction between copyright and related rights, the roles of the publisher and the producer in the context of musical works and the concepts of goodwill. Subsequently, we shall present the object of the publishing contract through a comparative analysis with applicable institutions from Commercial Law, their fiscal impact, and, finally, we shall set forth *de lege ferenda* proposals.

2. Clarifications regarding the meaning of certain terms

2.1. The author and the artist

The notion of the "author" is defined in art. 3 paragraph (1) of Law no. 8/1996 on Copyright and related rights. The legislator, through a concise formulation, defines the author as "*the natural person or persons who created the work*". In the current socio-economic context, this intuitive definition supports the reluctant doctrinal interpretations regarding the capacity of artificial intelligence to hold the status of an author in the context of generating works; it safeguards the subsequent interpretation and effectiveness concerning the assignment of author's economic rights and the status of the work's "titleholder". Regarding this latter aspect, although, in practice, some entities, following the acquisition of the economic rights, consider themselves the holders of "full" rights over the creation, this definition of the notion, together with the dual nature of copyright, maintains the creator's ultimate control over their work. Through this control, the author can exercise rights that can even lead to the prevention of the work's utilization by the presumed titleholder.²

In an attempt to clarify the notion of the "artist", the legislator has unified the qualities of the performing artists and the executing artist, providing a definition through exemplification. Thus, art. 95 of Law no. 8/1996 mentions that the following are performing or executing artists: *actors, singers, musicians, dancers, and other persons who present, sing, dance, recite, declaim, act, interpret, direct, conduct or execute in any manner a literary or artistic work, or a performance of any kind, including folklore, variety, circus, or puppet shows*. Although presenting an extensive approach, this definition is not immune to criticism, essentially due to the blending of creation, interpretation and execution activities. The definition offered by the legislator leaves it to the discretion of the interpreter to classify an artist as belonging to the category of

² In support of this assertion, we refer to the moral rights of the author, which can impede the exercise of the economic rights, such as: the author's moral right to decide whether, in what manner, and when the work will be brought to the public's attention, which can paralyze or delay the exercise of the economic right to authorize or prohibit public communication, directly or indirectly, of the work, including making the work available to the public, so that it can be accessed at any time chosen individually by the public; the author's moral right to claim respect for the integrity of the work and oppose any modification, if it is detrimental to their honor or reputation, which can prevent the exercise of the economic right concerning the creation of derivative works.

performing artist or executing artist. While we do not entirely oppose the unification of the two categories into one exhaustive definition, *de lege ferenda*, the notion of the “artist” should be adapted to the legislative drafting techniques, the actual actions undertaken by artists and adequate linguistic techniques, avoiding tautology. In our opinion, the term “artist” is understood to mean *the natural person who, through a personal and immediate contribution, performs or executes the content of a pre-existing work, regardless of the location and manner of expression*.

2.2. Copyright and related rights

Copyright, as a legal institution, first found regulation in England in 1709, with the adoption of the Statute of Anne.³ In essence, as a result of the abusive control exerted by printing houses, which held a monopoly over works, this law supported intellectual creation and marked the birth of modern copyright, under which intellectual creations were protected for a determined period of time.⁴ In Romania, the protection of copyright was initiated in 1862 through the Press Law, which was considered, at that time, “*the only specific law that enshrines the rights of literary or artistic property to writers and artists*”.⁵ The legal institution of copyright, as a body of rules regulating the legal framework of works, has undergone a constant evolution in Romanian law, from its first regulation in 1862 up to the current form of Law no. 8/1996.

Copyright represents a homogenous collection of prerogatives recognized to the author, which encompasses both moral attributes and economic attributes and allows the author to express concrete modalities of exploiting their work, within the limits established by law. Although, upon preliminary analysis, this institution, with its specific practical applicability, creates the appearance of an accessible understanding, the legal nature of copyright has sparked persistent doctrinal debates.

In specialized French legal literature, it has been acknowledged that copyright encompasses attributes derived from both property law and personality right, justified by the dual nature of copyright – hence, as an effect of the exclusive and absolute prerogatives the author holds over their creation, and also by the existence of author’s moral rights.⁶ Currently, there are opinions that integrate copyright into the category of intangible property, justified by the legal qualification of works as *intangible movable assets by operation of law*.⁷ It is important to specify that the dichotomous nature of copyright is not negated by this legal qualification, but rather maintained; one of the fundamentals of French law in the field of intellectual property is the indissoluble link between the author and their creation, manifested by privileging the analysis of moral rights.

³ Violeta Slavu, *Dreptul proprietății intelectuale [The Law of Intellectual Property]*, Hamangiu Publishing House, Bucharest, 2017, p. 173.

⁴ *The Project Gutenberg eBook of The Statute of Anne*, 2010, <https://www.gutenberg.org/cache/epub/33333/pg33333-images.html>, data accessed on November 3rd 2025.

⁵ Constantin Hamangiu, *Scriitori și artiști. Studiu asupra dreptului lor [Writers and artists. A study of their legal rights]*, Carol Müller Library Publishing House, Bucharest, 1897, p. 101.

⁶ Andreea Paula Seucan, *Drepturile morale și drepturile patrimoniale de autor [Moral and economic rights of authors]*, second edition, revised, Universul Juridic, Bucharest, 2015, p. 15.

⁷ Pierre-Yves Gautier, Nathalie Blanc, *Droit de la Propriété Littéraire et artistique [Law of Literary and Artistic Property]*, 2^e édition, LGDJ, Paris, 2023, p. 20.

In contrast, rooted in the provisions of the Constitution which refer to the “promotion of the progress of science and useful arts”, copyright in the U.S.A. is recognized as intangible property whose legal framework is based on the principle of utilitarianism. Thus, unlike continental law systems, where the author holds the central role, in common law systems, the author is preceded by the public interest. This principle is primarily manifested through the notion of *Fair Use* of intellectual creations, which “invites courts to permit a broad spectrum of socially and culturally valuable, but unauthorized, uses so long as they do not disproportionately harm the market for the copyrighted work”⁸ Similarly, concerning the author’s moral rights, it has been acknowledged that “moral rights are more deeply and firmly protected in the author’s rights laws of civil law countries than in common law jurisdictions. Waiver of moral rights, a practice generally allowed in common law countries, will be permitted in civil law jurisdictions only under the strictest of conditions, if at all.”⁹ This prohibition, in Romania, is expressly stipulated in art. 11 paragraph (1) of Law no. 8/1996, which provides that moral rights may not be the object of any waiver or alienation.

The content of copyright, divided into the economic aspect and the moral aspect, sets forth a series of rights benefiting the author. Regarding the content of the economic aspect, the basis for these rights is generally represented by art. 12 and 13 of Law no. 8/1996, which consecrate a series of actions that the author may prohibit or authorize, specifically: reproduction, distribution, import; rental; lending; public communication; broadcasting; retransmission by cable; the creation of derivative works and retransmission of the work, as well as the right to decide whether, in what manner and when their work will be utilized, including the right to consent to the utilization of the work by others. Regarding the content of the moral aspect, we refer, in general, to the provisions of art. 10 of Law no. 8/1996, which confers upon the author: the right to decide whether, in what manner and when the work will be brought to the public’s attention; the right to claim authorship of the work; the right to decide under what name the work will be brought to the public’s attention; the right to claim respect for the integrity of the work and the right of withdrawal, by compensating the holders of the rights of utilization, as a result of the prejudice caused by the exercise of the right of withdrawal.

Although often used interchangeably in common language, copyright and related rights represent two distinct categories of rights, generally with different objects and holders. In accessible terms, copyright aims at protecting the expression of intellectual creation, namely the work itself (in the context of musical works, we refer to the composition, lyrics and orchestration), the holder being the author of the work. Related rights protect the performance or execution, the medium in which the work is fixed (the phonogram or videogram), publications, broadcasts or the technical means of bringing the work to the public’s attention, which represent contributions subsequent to the birth of the creation. The holders of these rights are the performing or executing artists, producers of sound or audiovisual recordings, broadcasting and television organizations and publishers of press publications.

The content of related rights is stipulated according to the specific holder. Thus,

⁸ Paul Goldstein, P. Bernt Hugenholtz, *International copyright: principles, law, and practice*, fourth edition, Oxford University Press, New York, 2019, p. 6.

⁹ *Ibidem*.

we find in art. 94¹ of Law no. 8/1996 the economic rights recognized to publishers of press publications (reproduction and making available to the public of their own press publications); in art. 98 the economic rights of the performing or executing artist; in art. 106 the economic rights of the producer of sound recordings; in art. 110 the economic rights of the producers of audiovisual recordings; and in art. 129 the economic rights of the broadcasting and television organizations. In essence, these rights represent a series of prerogatives, similar to those deriving from the author's economic rights previously mentioned, yet exercised over their respective object, namely the interpretation or execution, press publications, phonograms, videograms, broadcasts and program services, in no way over the author's creation. It is noteworthy that only performing or executing artists benefit from the moral aspect, relating to their interpretation or executions, and not the other holders of related rights.

Therefore, within a musical work, we identify both the copyright over the creation and related rights of the performing artists, as well as the producer's related rights over the phonogram. As has been acknowledged in the specialized French doctrine, "*these shall be in coexistence and not in indivision, because they do not share the same right, and the right does not bear upon the same object (to be compared with the concurrences between the usufructuary/bare owner, the holder of a right of superficies/owner of the subsoil, etc.).*"¹⁰

2.3. The publisher and the producer

From the perspective of intellectual property law, the publisher is the person whom the copyright holder typically assigns the right to reproduce and distribute the work, in exchange for remuneration. From a practical commercial perspective, the publisher acquires a far more expansive role, becoming a veritable administrator of an author's creations.¹¹ By virtue of the principle of autonomy of will, the publishing

¹⁰ Pierre-Yves Gautier, Nathalie Blanc, *op. cit.*, p. 24.

¹¹ We deem it useful to use the term "administrator" of an author's creations, irrespective of the nature of the contract under which the publisher acquires the exercise of the author's economic rights (exclusive assignment contract or license agreement), inasmuch as, under art. 48¹ paragraph (1) of Law No. 8/1996, if an author has granted an exclusive license or has exclusively transferred their rights in respect of a work, the author has the right to revoke the license or the transfer of rights, in whole or in part, in the event of the non-exploitation of the work, under certain specific conditions. However, an exclusive assignment, namely a "transfer" of rights, from a civil law perspective, is equivalent to a form of sale, with the buyer (i.e., the assignee) becoming the holder of the rights, and based on the *pacta sunt servanda* principle, the seller would no longer be able to unilaterally revert the sale operation, except in the case of the buyer's failure to fulfill obligations, by applying the remedy of termination (of course, this principle applies with the specific particularities of the assignment of author's economic rights, namely for the duration stipulated by the parties in the contract; unlike a sale, the assignment of these rights can be effected for a determined period, but this does not invalidate the *pacta sunt servanda* principle). If the legislator's intention was to regulate a remedy similar to the termination of the publishing contract, this intention becomes uncertain through the provisions of paragraphs (2) to (9) of the same aforementioned article, which condition the right of revocation on "specific aspects" of each artistic sector, the importance of the author's contribution to the work, offers the possibility to revoke only the exclusive nature of the contract (without operating a full restitution of the rights), or obligate the author to remedy the circumstances that impede the exploitation of the rights, if they have this possibility (in which case the right to revoke the assignment is not recognized). Last but not least, the legislator obligates the author to continue the contractual relationship with the publisher for at least one year from the moment they intend to revoke the license or the transfer of rights. Paradoxically, paragraph

contract has, in practice, become a mechanism through which the publisher serves as a financier, administrator and consultant to the author concerning their composing career, or even the decision-maker regarding the modalities of utilizing their works. Depending on the scope and duration of the publishing contract, the publisher's role may be limited solely to the actions expressly stipulated by law or may be extended, generally in the case of authors who undertake the constant exercise of intellectual creation, having the status of a professional author who secures their livelihood through the exploitation of their works. Anticipating the subsequent analysis, we specify that, although the derivative object of the publishing contract is the work created by the author, the object of the contract is represented by a multitude of legal operations.

Regarding the notion of the "producer", the Romanian legislator, considering the international regulations in the field,¹² defines the producer of sound recording as *the natural or legal person who takes the initiative and assumes the responsibility for the organization and financing of the first fixation of sounds*. In our opinion this regulation although consistent with internationally established definitions, only defines the notion of the *original producer*. The acquisition of the status of a producer, in light of the aforementioned cumulative requirements, presents a series of practical issues whose regulation becomes necessary. In the market reality, the phonogram producer is not only the person who assumes responsibility for the first fixation of sounds, but also the person who acquires the phonogram subsequent to its creation. This person is typically differentiated from the original producer by the designation of the *current producer*, a term also utilized in the repertoire registration declarations with the collective management organizations for phonogram producers.¹³ Moreover, the notion of the *coproducer* – a person who assumes, alongside others, the responsibilities regarding the creation and utilization of the phonogram – is also observed in practice. This legal relationship is generally regulated in a manner similar to the legal regime of co-

(9) of the article stipulates that *paragraph (1) does not apply in the case of works or other protected subject matter if these works contain the contributions of several authors or performing or executing artists*, although paragraph (2) letter b) sets forth one of the conditions for the revocation of rights, namely the *relative importance of the individual contributions and the legitimate rights and interests of all authors and performing or executing artists, affected by the application of the revocation mechanism by an individual author or performing or executing artist, in the event that a work or other protected subject matter contains the contribution of several authors or performing or executing artists*. A further complication is represented by the repertoire registration declarations with the collective management organizations, which, at least in Romania, obligate the persons appearing in the declaration (author, lyricist, arranger, publisher) to mention the percentage of income due to them, in the capacity of "*copyright holders*". As a result of these arguments, we consider that the publisher's role is, in fact, that of an *administrator* of the author's works, not the *full holder* of their economic rights, with all the legal consequences arising from this status. Certainly, the parties may agree, under the principle of freedom of will, to entrust the publisher with the simple or full administration of the author's rights. Although the provisions of art. 48¹ of Law No. 8/1996 show obvious lacunae, we believe that the legislator's intention was to offer the author the right to revoke the assignment of rights (without restitution of the remuneration), regardless of the exclusive or non-exclusive nature of the assignment, in case of non-exploitation by the publisher. The term "non-exploitation" remains to be defined at the parties' discretion within the agreement, in order to avoid the ambiguous application of the law.

¹² Art.3 letter. c) of the *Rome convention for the protection of performers, producers of phonograms and broadcasting organisations*, United Nations, 1961, https://treaties.un.org/pages/ViewDetails.aspx?src=TR&EATY&mtdsg_no=XIV-3&chapter=14&clang=_en, accessed on November 3, 2025. It stipulates: *producer of phonograms – the natural or legal person who first fixes the sounds of a performance or other sounds*.

¹³ In Romania, the reference collective management organization is the Union of Phonogram Producers in Romania (U.P.F.R.).

ownership, with the coproducers sharing, in determined quotas, the costs, benefits or losses and, last but not least, the shares of the producer's related rights. Decisions regarding the exploitation, within the limit of acts of administration, are, however, taken by a single designated coproducer. Coproduction contracts generally contain clauses similar to those in art. 644 of the Civil Code concerning the contract for the administration of co-ownership.

In the context of the music industry, the producer's role transcends the activity of fixing works, assuming a strategic positioning through an extended administration of the rights incorporated in the phonogram, including the related rights of the artists who perform the work. Assimilated to record labels, the producer exercises an exploitation function similar to that fulfilled by the publisher in relation to the copyright over the work.

2.4. *Stricto* and *lato sensu* meaning of “goodwill”

Although in international legal language there is, as a rule, terminological identity between goodwill and legal goodwill (*fonds de commerce*), this latter aspect only represents the *stricto sensu* meaning of the notion. In common law systems, the *lato sensu* notion of goodwill is used in the context of the sale of businesses, designating the reputation of a company. Furthermore, from an accounting perspective, it represents the net surplus value of the company, specifically the difference between the enterprise value and the fair value of the assets and liabilities. In certain doctrinal expressions, the term “commercial goodwill” has been used to denote the meaning of commercial reputation, and the term “legal goodwill” has been used to denote the meaning of *fonds de commerce*.¹⁴ Thus, from the common law doctrinal perspective, the notion of goodwill detaches itself from the concept provided by continental law, representing a residual intangible value, dependent on reputation and connections. In this sense, the doctrine has noted the definition accorded to the notion by the U.S. Supreme Court, namely “*every positive advantage that has been acquired by a firm in the progress of its business*”, essentially constituting that value acquired beyond the accounted assets and resulting from reputation and competence. It can also be associated with the management, employees, services or products of the company.¹⁵

Regarding the *stricto sensu* meaning of the notion, namely the *fonds de commerce*, it is not devoid of doctrinal controversies. Although initially qualified as a *universitas facti* and, by its nature, an intangible asset, the *fonds de commerce* currently presents divergent doctrinal qualifications, with opinions existing that it would constitute an affectation patrimony. Without dwelling on this problematic, in our opinion, the legal nature of the legal goodwill (*fonds de commerce*) is directly associated with the holder; this interpretation being the result of the legislator adopting divergent normative acts that are concurrently in force. In the case of a legal entity, the *fonds de commerce* is, indubitably, a universality, whereas, in the case of a natural person holder, the nature of an affectation patrimony explains the separation of the assets dedicated to the

¹⁴ Percy Dewe Leake, *Commercial Goodwill. Its history, value, and treatment in accounts*, Sir Isaac Pitman & Sons LTD, Londra, 1921, p. 2.

¹⁵ Andre Fiebig, *Commercial and Economic Law in the United States of America*, third edition, Wolters Kluwer, 2017, pp. 30-31.

professional's commercial activity from the rest of their patrimony.¹⁶

3. The publisher's goodwill and the object of the publishing contract

In this section, we propose an analysis of the object of the publishing contract from the three perspectives established by civil law: the object of the legal act, the object of the obligation, and the object of the performance. As previously noted, in the context of business and commercial agreements between the publisher and the author, the publishing contract, as a result of the autonomy of the parties' will, is not limited to the assignment of the right to reproduce and distribute the work, but becomes a complex legal mechanism with multiple legal operations, aiming at the author's professional development, as well as the publisher's *fonds de commerce* (legal goodwill).

Although the publishing contract is perceived as being a simple assignment of the rights to reproduce and distribute a work, the reality of the music industry forces a reinterpretation of this vision. In this field, works are usually the result of a collective creation, involving a plurality of authors whose contributions are inseparable and difficult to individualize. This obliges the authors to divide the final work into percentage shares, determined according to the role and extent of each contributor's contribution (composer, lyricist, arranger). Based on the principle of freedom of contract, each author has the possibility to conclude assignment and publishing contracts with publishers, through which they typically assign a share of these economic rights, concurrently constituting a right of administration over the remaining percentage, in favor of the publisher.

This accumulation of legal operations arose as a result of practices consolidated by collective management organizations through work registration declarations, compelling authors and publishers towards a form of co-ownership, in which the main publisher does not act as the full title holder of the work, but as a *de facto* administrator of the shares. Consequently, the object of the legal act, in the musical context, is represented by the assignment of a share of the author's economic rights, in exchange for commercial exploitation services, following which the revenues are distributed between the author and the publisher.

¹⁶ Article 3 paragraph (1) letter r) of Law No. 265/2022 on the Trade Register and for the amendment and supplementation of other normative acts impacting the registration in the Trade Register, published in the Official Gazette No. 750 of July 26, 2022, provides a first definition of the *fonds de commerce*, namely: *a complex of movable and immovable, tangible and intangible assets – such as trademarks, trade names, emblems, patents, prime location – utilized by an economic operator for the purpose of carrying out its activity and attracting and maintaining clientele.* Article 2 letter j) of Government Emergency Ordinance No. 44/2008 regarding the carrying out of economic activities by authorized natural persons, individual enterprises, and family enterprises, published in the Official Gazette No. 328 of April 25, 2008, provides a definition of the affectation patrimony of the entrepreneur, a natural person: *a patrimonial mass within the entrepreneur's patrimony, representing the totality of rights and obligations dedicated, through a written declaration or, where appropriate, through the incorporation agreement or an addendum thereto, to the exercise of an economic activity.* Based on these definitions, prestigious authors have formulated distinct opinions regarding the legal nature of the *fonds de commerce*. For details regarding this issue, please refer to Stanciu D. Cărpănu, *Tratat de drept comercial român [Treatise on Romanian Commercial Law]*, 5th edition, updated, Universul Juridic, Bucharest, 2016, p. 101., Smaranda Angheni, „Regimul juridic al fondului de comerț în contextul unificării dreptului privat” [The legal regime of the goodwill in the context of the unification of private law], in Ciprian Raul Romitan, Paul-George Buta (eds.), *In Honorem Viorel Roș. Studii de drept privat și public*, Hamangiu Publishing House, Bucharest, 2021, pp. 3-17.

Thus, the performances to which the publisher is obligated are not limited to the reproduction and distribution of a work, but represent a complex object of activity, based on partnerships, negotiation capacity and outsourced services, such as in the case of online content-sharing service providers, whose activity involves the public communication of works, as a result of concluding license agreements. The publisher's role extends beyond the optimal placement of works with commercial partners, performing artists or producers, to a series of facilities necessary for the author's creative manifestation, by providing the necessary conditions for their artistic expression. From an economic point of view, all these actions or inactions can have significant financial consequences.

Regarding the derivative object of the legal act, it is unequivocally represented by intangible assets, namely the author's economic rights over the works, regardless of whether the publisher produces material supports in which the work will be embodied.¹⁷ The material support, in this case, does not invalidate the intangible nature of the works, nor does it transform them into corporeal assets, but only represents a commercial exploitation modality that allows, from a legal perspective, the extension of the effects of certain legal institutions — typically inapplicable to intangible assets — to them. In this regard, we refer to possession, as a state of fact, tradition, as a means of acquiring the right of ownership, and manual gift, as an institution specific to corporeal assets.

The author's economic rights, depending on the scope, duration, and nature of the assignment, represent a valuable asset of the publisher and, as such, become part of its *fonds de commerce*. These intangible assets implicitly have a direct impact on the entity's balance sheet, being treated as intangible assets that can be assigned or licensed, as an integral part of the *fonds de commerce*. Furthermore, the portfolio of rights exercised by the publisher influences the value of its commercial goodwill. For example, a globally prestigious publisher will justify a value net superior for its commercial goodwill, precisely by holding a catalog of benchmark authors whose creations generate constant revenues, transforming mere reputation into quantifiable future profits, thereby consolidating its commercial position in the market. As a result of strategic management actions that position the publisher as an investor who monetizes creativity, the value of the *fonds de commerce* and its commercial reputation are consolidated.

Regarding the object of the obligation, we mention one final domain-specific aspect. Given that the value of commercial goodwill is inextricably linked to the publisher's reputation, and the author is typically a public figure, the obligation to maintain the confidentiality of the publishing contract is included among the performances assumed by the parties, an aspect that is not merely accessory, but determinant. This obligation has a multiple scope of application, but from the publisher's perspective, it manifests, in particular, regarding the processing of the author's personal data. In the context of the *fonds de commerce*, we specify that personal data, when embodied in a database (an incorporeal asset by its essence), can become a valuable asset of the publisher, but whose circulation is restricted by the relevant legal provisions. Thus, the confidentiality obligation exceeds the sphere of know-how or trade secret, transforming into a nuanced management of a multitude of information.

¹⁷ As a general rule, the realization of tangible carriers (CD, Vinyl, etc.) presupposes a partnership between the publisher of the work and the producer of the phonogram. In the event that the publisher facilitates the fixation of the work into a phonogram, he/she shall also acquire the status of a producer.

By way of exception, in the digital environment, authors' personal data are not mere secondary information; they are either used for respecting the author's moral rights (the right to claim authorship of the work), at which point data such as name, surname and online identifiers are used, or they are even incorporated into the object of the performance. In this latter case, we typically refer to the voice of the performing artist or the image immortalized in the videogram, personal data that become an integral part of the intangible asset and for whose processing the producer of the phonogram or videogram is responsible.

4. The tax impact of the publishing contract

Given that the tax impact from the publisher's perspective depends on the form in which the company is incorporated and the taxation method (corporate income tax or income tax), the analysis of this matter presents many variables. For these reasons, in this paper, we will limit ourselves to briefly outlining the tax obligations of authors who earn income from intellectual property rights, thereby acquiring the status of taxpayers from a fiscal perspective.

For the net income obtained from the capitalization of intellectual property rights, authors owe a flat tax rate of 10%. A defining element of this tax regime is the method of establishing net income, specifically through the application of a flat-rate expense quota of 40% to the gross income collected.¹⁸ This legislative simplification, mandated by the need to avoid excessive bureaucracy and to ensure the payment of dues to the state budget, requires the publisher, as the payer of income, to withhold the tax at source, relieving the author of the obligation of subsequent actions in this regard. However, pursuant to Art. 72¹ of the Fiscal Code, if the income is paid by entities that are not obliged to keep accounting records, the burden of calculating and paying the tax falls to the taxpayer who earned income from intellectual property rights. It is worth noting that, regarding the tax, the legislator also maintains the possibility for the income beneficiary to independently calculate the due contributions using the real system, based on information contained in their own accounting records. In this case, the gross income and deductible expenses, under the conditions of Art. 68 of the Fiscal Code, are considered in determining the tax base.

Concerning social insurance contributions, the persons exempt from paying these contributions are, according to art. 150 of the Fiscal Code: individuals insured in their own social insurance systems who are not obliged to be insured in the public pension system according to the law, persons who are pensioners and individuals who earn income from salaries and wages assimilated to salaries. In other cases, when the holder of the intellectual property right earns income at least equal to 12 gross national minimum wages, they owe the social insurance contribution, specifically a percentage of 25%, calculated on a tax base established according to art. 148 paragraph (2) of the Fiscal Code. Otherwise, the holder has the option to pay social insurance contributions,

¹⁸ In the case of taxing income acquired based on the resale right, the compensatory remuneration for the private copy or income acquired by heirs, the flat-rate expense deduction, benefiting authors in other cases of exploitation of intellectual property rights is not applicable. In order to determine the tax base, sums owed to collective management organizations or other payers of such income shall be deducted from the gross income, pursuant to art. 72¹ paragraph (2) of the Fiscal Code.

based on a calculation base that cannot be less than the threshold mentioned above.

The payment of health social insurance contributions, at a rate of 10%, is mandatory for titleholders who earn income from intellectual property rights, unless they fall into one of the exceptions explicitly provided by art. 154 of the Fiscal Code. The calculation base for the health social insurance contribution is represented, similarly to the social insurance contribution, by a series of value thresholds, ranging between 6 and 24 gross national minimum wages. The specific conditions regarding the calculation method depend on the taxpayer's concrete situation, but the main legal basis for income derived from intellectual property rights is art. 170 of the Fiscal Code.

5. Conclusions

The aim of this study was the interdisciplinary analysis of practical implications in the field of copyright law, within the context of the legal relationship arising between the publisher and the authors of musical works, with the goal of supporting the understanding of certain interpretive nuances. The study began with preliminary clarifications regarding the meaning of terms, facilitating the comprehension of practical distinctions between author and artist, copyright and related right, producer and publisher, and goodwill in the *stricto sensu* and *lato sensu* meanings.

Furthermore, through this research, we highlighted the significant importance of the publisher's role in the commercial exploitation of works, a fact which led the parties to resort to the principle of freedom of will to restructure the object and effects of the contract, with the aim of standardizing commercial legal relationships after the Western model, especially that of the U.S., considered a benchmark in the field. As a result of these practices, the contract between the author and the publisher encompasses various legal operations in its structure, whose effects are governed both by the general rules regarding obligations and by the rules applicable to the contract of sale (in the case of the assignment of a share of the author's economic rights), as well as the legal regime of co-ownership, transforming the source of work publishing into a complex contract.

The research findings highlight a necessity for legislative adaptation in the cultural-artistic field and a harmonization of legislation with the established usages by collective management organizations. These entities, although legally functioning as simple administrators of their members' copyrights, acquire a quasi-legislative role through the practices they establish, in the absence of a regulation adapted to the needs of various sectors of activity, by setting specific rules of interaction. Moreover, their repertoire is treated as a publicity register, which denotes a need from society regarding this matter, useful not only for extrajudicial practice but also for courts of law when resolving claims concerning the infringement of titleholders' copyrights.

Bibliography

1. Angheni, Smaranda, „Regimul juridic al fondului de comerț în contextul unificării dreptului privat” [The legal regime of the goodwill in the context of the unification of private law], in Romitan, Ciprian Raul & Paul-George Buta (eds.), *In Honorem Viorel Roș. Studii de drept privat și public*, Hamangiu Publishing House, Bucharest, 2021, pp.3-17.
2. Cărpenaru, Stanciu D., *Tratat de drept comercial român* [Treatise on Romanian

- Commercial Law*], 5th edition, updated, Universul Juridic, Bucharest, 2016.
3. Fiebig, Andre, *Commercial and Economic Law in the United States of America*, third edition, Wolters Kluwer, 2017.
 4. Gautier, Pierre-Yves & Nathalie Blanc, *Droit de la Propriété Littéraire et artistique [Law of Literary and Artistic Property]*, 2^e édition, LGDJ, Paris, 2023.
 5. Goldstein, Paul & P. Bernt Hugenholtz, *International copyright: principles, law, and practice*, fourth edition, Oxford University Press, New York, 2019.
 6. Hamangiu, Constantin, *Scriitori și artiști. Studiu asupra dreptului lor [Writers and artists. A study of their legal rights]*, Carol Müller Library Publishing House, Bucharest, 1897.
 7. Law no. 265/2022 on the trade register and for amending and supplementing other normative acts affecting registration in the trade register, published in the Official Gazette no. 750 of July 26, 2022, with subsequent amendments.
 8. Law no. 8/1996 on copyright and related rights, republished in the Official Gazette no. 489 of June 14, 2018, with subsequent amendments.
 9. Leake, Percy Dewe, *Commercial Goodwill. Its history, value, and treatment in accounts*, Sir Isaac Pitman & Sons LTD, Londra, 1921.
 10. *Rome convention for the protection of performers, producers of phonograms and broadcasting organisations*, United Nations, 1961, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtsg_no=XIV-3&chapter=14&clang=_en, accessed on November 3, 2025.
 11. Seucan, Andreea Paula, *Drepturile morale și drepturile patrimoniale de autor [Moral and economic rights of authors]*, second edition, revised, Universul Juridic, Bucharest, 2015.
 12. Slavu, Violeta, *Dreptul proprietății intelectuale [The Law of Intellectual Property]*, Hamangiu Publishing House, Bucharest, 2017.
 13. *The Project Gutenberg eBook of The Statute of Anne*, 2010, <https://www.gutenberg.org/cache/epub/33333/pg33333-images.html>, data accessed on November 3, 2025.