Against intellectual property moral rights on economic grounds

Alin SPERIUSI-VLAD[1]

Abstract. *Intellectual property moral rights must be carefully studied by the business community, which could easily and wrongly believe that the intellectual property business involves only intellectual property economic rights. This paper represents an introduction meant to reveal a contrasting legal and economic reality concerning the effects of the intellectual property moral rights over the economic relations. This is a consistent proof that the entire intellectual property regulatory system is set not for the "enrichment" of the commerce with new intangible assets or for clarifying the legal status of this category of intangible assets, but rather to protect the authors of intellectual property that are part of the international commerce. Considering this, any unclear regulation must be interpreted in favour of the author, as they prevail over the interests of all other interested persons and, by consequence, any obligation assumed by the author or a contractor thereof, may be restricted, i.e. extended, by claiming that the author's moral rights are violated or that they are not fully protected. In the intellectual property field, any kind of use of the protected creation involving the economic rights, is indissolubly connected to the work's authorship claiming and, very often, with the work's integrity compliance or withdrawal right. Any contract concluded between a person acquiring economic rights over an intangible asset, cannot deny or diminish author's moral rights. Also considering the intertwining of moral rights with economic rights, one part of a contract can invoke the existence of a moral damage as a result of failure to comply with the author's moral rights, which is impossible to claim in an ordinary contract not involving intellectual creations.*

Keywords: *contractual liability; economic rights; freedom of commerce; intangible assets; intellectual property; mandatory regulations; moral rights.*

1. Assistant Professor, Ph.D., Post-doctoral researcher, Faculty of Law, West University, Timișoara, Romania, alin.speriusi@e-uvt.ro

Atypical moral rights in intellectual property law: similar object with the intellectual property economic rights

Even if intellectual property law represent a marvellous domain of research for academics, especially for private law scholars due to the numerous debates around the fundamental basis of property rights acknowledged by the nationals and internationals regulations with pro arguments going from natural rights to an utilitarian vision and with an opposition to the patent and copyright (Kinsella, 2001) and around the tensions in an intellectual property system (Boyle, 1997) every person who begins studying intellectual property law is easily overwhelmed by the large amount of regulations. Legal rules about creations, different systems protection concerning copyright, patents, trade marks, national statutes and international conventions concerning each one of this author's rights, sui generis right and many other important matters. Indeed we can easily assume that intellectual property is an esoteric and arcane field, something that is only interesting and comprehensible to a specialist. Even for someone with a private law background it is not the easiest thing to do to understand the intellectual property regime. Even if intellectual property law is part of the private law (Speriusi-Vlad, 2012 for further development on this matter), is an atypical domain because of the numerous imperative rules and the infinite international conventions. The private law, regardless the national systems, is not characterized by imperative regulations, which involve more of the time a public law or a criminal regulation. Also the international conventions are referring usually to different matters that are not regulated by the private law, like international crime, taxation or sovereign state matters. All this could be understood considering the specific object of the regulation, the intangible assets (Moore, 2012), but also the importance of the impact of the intellectual property rights as a general rule (Georgescu & Necula, 2013 - ”*without any doubt, in the last years, the impact of intellectual property rights has played a very important role in the promotion of innovative processes and indirectly in the process of economic growth*”).

Considering all this, imagine the efforts made by a person without a legal background in order to understand all this legal mechanisms. Nowadays when intellectual property value seems to be tremendous important and is growing all the time (Ştefănescu, Petrecun & Munteanu, 2011- ”*many meaningful reasons make intellectual property and its protection be*

imperative (...) the legal protection of new creations encourages investment, leading to other innovations; the promotion and protection of intellectual property stimulates economic growth, leading to the creation of new jobs and new branches of activity, improving the quality of life"), it is very probable that someone tries at least to search an information about a particular aspect of intellectual property and wants to understand it. When someone concludes a business transaction involving an intellectual creation, he values all the economic aspects, but paradoxically he must also take under consideration also the moral ones. More exactly each business transaction relating to an intellectual creation involves also the intellectual property moral rights and not only the economic ones. This paradox underlines the need to understand and to explain the intellectual protection system. All the debates involving philosophical and ethical arguments justifying or denying intellectual property rights are very interesting, but the more important ones are those disputes that produce a significant impact in the close reality. Loved or blamed the intellectual property protection systems cannot be denied and is more important to better understand it.

The intellectual moral rights are conceptually based on the natural law. According to the natural-rights view of Intellectual Property creations of the mind are entitled to protection just as tangible property is. Both are the product of one's la bor and one's mind. Because one owns one's labor, one has a natural law right to the fruit of one's labor. Under this view, just as one has a right to the crops one plants, so one has a right to the ideas one generates and the art one produces (Kinsella, 2001). The consequence is that the intellectual creation represents an extension of the creator's personality and consequently his entitled to exercise moral rights over his creation.

The intellectual property moral rights present a particular feature at the level of the entire legal system. The existence of the generally moral rights (non economic rights) is recognized in any legal system, but rather as having a completely different object than economic rights, which is most often the person or others legal subjects or theirs private life. But the intellectual property moral rights have the same object with the intellectual property economic rights, which is the intellectual creation. Basically, the author simultaneously exercises economic rights and moral rights on and in relation to the intellectual creation. This is the only case of coexistence

of economic and moral (non economic) rights over the same object, i.e. the intellectual creation. The only other link between an economic right and exercise of a non-economic right is the fact that in case of failing to comply with a non-economic right allows the rightholder to claim damages (Ionașcu cited in Mihai, 2002, p. 93 - ”*If, however, violation of a personal non-economic right causes the holder […] any pecuniary loss, the civil law obliges the one who, by his wrongful act has caused this damage, to repair it in full, often by compensation, according to the rules on civil liability”*), having recognized its economic right of claiming compensations for the moral damage suffered. However, this connection, also valid for infringement of moral rights, is by far a representation of simultaneous exercise of moral and economic rights on the sole object represented by the protected intellectual creation, which confirms the uniqueness of moral rights in the field of intellectual property.

This simple coexistence of simultaneous exercise of moral and non-economic rights on intellectual creation protected by the law, results in a very close relationship between moral rights and economic rights, where exercise of economic rights may be influenced by moral rights (for example from the French jurisprudence see Olteanu, 2010, p. 17 - ”*Bringing of recordings in an MP3 format and their placement on the Internet is, according to French jurisprudence a violation of the moral right to disclosure, as long as the author has not exercised the right to disclose this. This way, it was appreciated, for example, by the Paris Court House, that posting on Internet of 23 songs of Jean Ferrat is a violation of the right to disclosure (see M. Cornu, I. de Lamberterie, P. Sirinelli, C. Wallaert (2003). Dictionnaire comparé du droit d'auteur et du copyright. Paris: CNRS Editions, p. 428, which mentions the existence of a decision to support the exhaustion of the right to disclosure). In our opinion, it is rather a violation of the economic right to decide how the work can be used. It is, indeed, a very close connection between the right to disclosure and the economic right of the author to decide if, how and when his/her work will be used*”).

However, what is the reason behind the high stake of recognition and protection of the moral rights of the author of intellectual creation? A stake so high as to prevent one of the most important national legal systems (of The United States of America) to adopt the rules of the Convention from Bern, at almost 100 years of its signing, all the more so as at the date of

its adoption, our moral rights protected through the Convention of Bern were, in one way or another, already protected in the legal system of the United States which, at first glance, would mean that adherence to the rules of the Convention of Bern could have been done much faster and that the entire route of joining the international convention rules would have been nothing but a misunderstanding, later clarified. Clearly, there was no big misunderstanding requiring a period of clarification of almost 100 years, but US reluctance was due to the special importance given to the author's moral right, importance that reflects in a special regulation of these rights, separately from other personal non-economic rights of the subjects, such as personality rights and, in some extent, by the fact that they did not understand what justifies at the present a separate regulation for the copyright moral rights.

Intellectual property moral rights and the economic side of the intellectual creation

Once with the appearance of the first rules on intellectual property, intellectual creations fall into the commercial distribution, instituting their legal regime, both in terms of protection granting, and in terms of author's recognized rights. This way, actual intellectual creations (and not the various creations materialized in paintings, sculptures, manuscripts, and book copies) have evolved in terms of law, from an asset insusceptible of appropriation under the legal rules of the time or, at least, a *res nullius* stray asset, into an intangible asset that was part of the commercial distribution. By regulating the author's moral rights in relation to intellectual creation, we wanted to emphasize that the entire system of regulations in the field of intellectual property has not been set for the ”*enrichment*” of the commerce with new intangible assets or for clarifying the legal status of this category of intangible assets, but rather to protect the authors of intellectual property who are thus part of the international commerce. This way, it is established that protection of intellectual creations by legal rules and not by moral norms, as happened before, does not mean an abandonment of non-economic, moral side of the intellectual creation, which relates to the author's person, in favour of economic aspects inherent to including any asset in the commercial distribution. This emphasis was especially important because, often during privileges and rarely during first national regulations, the economic side of intellectual creation and the benefit of

earnings from the exploitation of intellectual creation were taken into consideration, without giving due consideration to the legitimate interests of authors. This was no longer ignored when granting first privileges to authors of creations, enabling authors to print them and earn from their exploitation. Confirmation of author's moral rights in the national legislation clarifies this issue.

Another justification of author's moral rights confirmation in intellectual property regulation is directly related to the ratio between protection of authors' intellectual creations, on the one hand, and freedom of commerce, freedom of ideas, freedom of access to knowledge, freedom to research, freedom of expression and information, on the other hand (Olteanu, 2010, p. 17). In terms of values protected by the legal system, the interests of the author are contradictory to the interests of all other subjects hat will take advantage of and enjoy the intellectual creation base on the freedom of commerce, freedom of ideas, freedom of access to knowledge, freedom to research, freedom of expression, freedom of information a.s.o. But this contradictory position is more theoretical or potential because, in practice, there is often a question of identifying the relationship between the author of intellectual creation and other persons he/she enters into contractual relations with, and thus acquire the right to use the intellectual creation. Thorough regulation of author's moral rights emphasizes the fact that author's status and person take precedence over others who have, acquire or claim a right over it, the protected creation having an intrinsic value, closely related to the author's person, independently of his/her social exploitation, including distribution. A confirmation in this direction is the fact that in the field of industrial property, where intellectual creation is inextricably linked to the commercial distribution, by industrial applicability, author's moral rights, even if applicable, are much less highlighted by national and supranational regulations, even if recognized by several relevant case-law (Spineanu-Matei, 2011, pp. 244-245 - "*The damaging fact consisted in using the webpage and, hence, the phrase "hebo" contained by several keywords in the source code – and not in its creation. Therefore, there was no relevance if the defendant herself created the page or by a third party the defendant had a contract concluded with. (...) If the defendant founded, eventually, that, despite those agreed under the contract, S.C. G.M. CO S.R.L. created a webpage that is used by accessing some keywords over which the defendant has no legal right obtained from the holder, nothing*

prevents her from refusing the product or claim damages; but the fact that the defendant used the webpage as it was created, places her in the position of liability towards the holder of the trademark that was violated, pursuant to art. 35 par. (2) letters a) and b) of Law 84/1998 (...) The defendant entered into a contract with the plaintiff, under which she bought from the latter "HEBO" trademark modular cabins and accessories, which indicates that she was aware of the mark use by another trader. This contract does not grant the right to use the mark in its own commercial activity, and such a use was prohibited according to art. 36 par. (1) of Law 84/1998, starting with the registration date of the trademark. (...) Publication of request in B.O.P.I. has precisely the aim to warn others about the applicant's approach to appropriate a sign as a trademark and the latter is conferred a temporary protection which is strengthened only if the trademark is, at the end of the procedure, registered with O.S.I.M. (...) Article 85 of Law 84/1998 provides that for committing the acts of infringement, under art. 83, persons in fault may be required to pay damages under the civil law. The civil law, i.e. art. 998-999 Civil Code, does not contain specific criteria for determining the amount of compensation, but after entry into force of Law 84/1998, G.E.O no. 100 was adopted, which led to the direct transposition of Directive 2004/84/EC of the European Parliament and the Council. Article 14 of the mentioned regulation provides that: 1) At the request of the injured party, the Court shall order the person who intentionally conducted a counterfeit, to pay the rights holder appropriate compensations for the damages actually suffered, as a result of infringement; 2) In determining damages, the Court shall consider: a) all relevant aspects, such as negative economic consequences, in particular loss of earnings suffered by the party, benefits achieved by the person who violated a protected intellectual right and, as appropriate, elements other than economic factors, such as the moral prejudice caused to holder of the infringed right; (...) Paragraph (2) letter a) contains a list of illustrative issues which the Court takes into account in determining damages, among which non-pecuniary damage caused to the holder of the infringed right. It does not result from this wording that, every time an infringement of intellectual property is ascertained, the Court shall have to grant the rights holder compensations, both for material damages, and moral damages. On the contrary, referring to moral damages, the law provides that it is taken into consideration, "as appropriate". With reference to the European Convention on Human Rights, also cited in support of appeal and which might apply primarily where domestic law would be inconsistent with, according to art. 21 of the Constitution, the High Court finds the followings: There is no text in the Convention which provides that whenever there is an

infringement of property rights – such as intellectual property subject to the present case – the person whose right was infringed suffers both material and moral damages. Not even from the jurisprudence of the European Court of Human Rights, which is integral with the Convention, such a conclusion can be drawn. The Court of Appeal did not consider that granting of compensations for moral damages would be incompatible with the action founded on infringement of the trademark, in which case it would be the issue of legality of decision, but fairly considered that infringement of a trademark does not involve, de plano, creation of moral damages. As one who makes a claim must prove it, according to art. 1169 Civil Code and, in this case, the Court of Appeal took notice of the fact that the plaintiff has not established a moral damage, the decision to reject the count appears to be legal", see the High Court of Cassation and Justice, Civil and Intellectual Property Section (2010) – *Earlier Infringement Action. Use of Advertise Brand in B.O.P.I. Material and Moral Compensations. Legal Ground (HEBO/HEBO ROM INTERNATIONAL SRL)*, Decision no. 2856 of May 7, 2010), precisely to emphasize the balance that characterizes the relationship between the author of intellectual property and other persons who have a right to use the intellectual creation.

The primacy of the author versus other subjects which will enjoy the intellectual creation base on the freedom of commerce, freedom of ideas, freedom of access to knowledge, freedom to research, freedom of expression, freedom of information (Ken, 2006), is also manifested in the legal relations arising under tort liability, as a result of failure to comply with the author's rights, an infringement of author's legitimate rights and interests being considered an infringement of author's person and status, since most times moral rights expressly regulated by national or supranational legislations are violated. In most of these legal systems, non-economic rights benefit from a much broader protection compared to economic rights, which reflects in the legal conditions to attract liability of the person who committed the offense, the probation, the statute of limitations, a fact inclusively confirmed by Romania's jurisprudence (Zeca, 2010, pp. 56-66 - "*Responsibility that entails under art. 139 of Law no. 8/1996 is one that has a tort basis (...) The capacity to stand trial results from the author of the illegal prejudicial fact: ignoring the economic rights of the author of the musical play, and of the plaintiff's related interpretation rights, which had to authorize the type of use under its exclusive rights (...) Ministry*

of Culture and Heritage has not obtained the agreement of the plaintiff to use his/her creations: the musical work with text and interpretation, through a contract of assignment specific to the type of use the parties agreed on, i.e. loan of work and set execution or interpretation. The right to authorize the use belongs exclusively to the plaintiff, according to art. 12 and art. 98 par. (1) of law (...) Thus, the defendant, Ministry of Culture and Heritage, committed an unlawful illegal fact, using in illegal conditions works carrying copyrights and related rights protected by law (...) For fulfilling the conditions of torts, it was noted that it is sufficient for the author to indicate legal, non-economic and moral values deemed injured by the conduct of the defendant, their guarantor, a conduct inconsistent with the law assuming use of his musical composition and interpretation in an advertisement to promote a national public company, without his consent (which he declared ready to express) (...) To repair this damage, moral damages must be justified, and not proved" see Bucharest Court of Appeal (2009) – *Rights to Use His Intellectual Creation. Video Advertising – Audiovisual Work. Tort Liability. Quality to Stand Trial of the Person Responsible. Need to Justify Punitive Damages. No Obligation to Prove Moral Damages*, Civil Decision no. 49/2009).

Given the importance granted to moral rights in the field of intellectual property, in all national systems, the effect of their protection and recognition in the field of intellectual property must be identified, i.e. the extent to which this area is or is not different from establishing moral credentials for the author. Such an approach is justified because moral rights radiate beyond their strict field – author's person, personality or reputation – significantly interfering with economic aspects of commercial relations arising in connection with the protected intellectual creation.

Firstly, the recognition by law of author's moral rights stresses the importance of authorship in all legal relations arising in connection with the intellectual creation protected. This emphasis its important because, usually, granting the legal status of intangible assets is primarily made for them to be appropriated, to be part of the commercial distribution, in order to protect the persons who want to acquire any type of right over them. Regulation of moral rights mitigates this rule in the field of intellectual property assets by showing that in this domain, the author has a dominant position to other persons they have commercial relations with, and also to any other person they might have commercial relations with,

i.e. to other legal subjects. This way, it emphasizes once again that legal rules have been established in this area, not to regulate and certify social relations arising in connection with intellectual property, but rather to protect the author's interest, in the first place. A direct consequence would be that any unclear regulation must be interpreted in favour of the author, i.e. the holder of the right recognized, as they prevail over the interests of all other legal subjects.

The economic contractual relations who refer to an intellectual creation are thus substantially influenced, because any obligation assumed by the author or a contractor thereof may be restricted, i.e. extended, by claiming that the author's moral rights are violated or that they are not fully protected. Intertwining of moral rights with economic rights in legal relations having as subject intellectual creations creates a specific kind of unique moral-economical legal obligation that does not resemble any other category of legal obligations, and which are clearly distinguished, as shown in economic legal relations or non-economic personal legal relations. In these clearly differentiated legal relationships, the only link is the possibility to cover compensation for moral damage through materials. In the legal field of intellectual property, any kind of use of the work that pertains to the economic side has a close connection with the work's authorship and, very often, with the work's integrity compliance or withdrawal right. In a property sale-purchase contract, the seller cannot go back on the given contract or request its cancellation as a result of its rights pertaining to personal status might have been prejudiced, due to the fact that the person acquiring the property would cause some changes that might affect the memory or image of the vendor's family, and if there were a clause in this respect, such clause would be interpreted narrowly in the sense of granting compensation to the person affected in any way, and not in the sense of transaction cancellation.

Thirdly, direct consequences of legal recognition and protection of author's moral rights consist in setting of some imperative rules in contractual legal relations the author is a part of. These imperative rules are also applicable to contractual legal relations that have as subject intellectual property, even if the author is not a part of (Harrison, 2014). Virtually, any contract entered into by a person who has acquired the intellectual property rights over the intellectual creation of any other subject of law, cannot deny or

diminish the author's moral rights, namely the holder's protected moral rights (important emphasize especially in the case of distinctive marks, when the holder of the registration certificate is different than the author of that distinctive mark) and, insofar there is the slightest possibility in this respect, such a contractual clause is either void, or interpreted as having effects are not likely to restrict the moral rights recognized by law. In this respect, by decision rendered in the Roualt affairs, Orléans Court of Appeal decided that the work cannot enter the commercial distribution in any other day than the day its author has freely declined jurisdiction by a discretionary act and brought it into the public eye, creating an inter-conditionality between exercising the right of disclosure and entry of asset into the commercial distribution. This is the best example of moral rights' influence on commercial distribution rules and economic legal relations. The influence is even greater as it is claimed, based on the absolute and discretionary features, the author being the only one who could decide, without any jurisdiction, on disclosure of work, name under which the work shall be made public and its withdrawal.

A particular effect of recognition of moral rights is the change of a recognized rule in the field of contractual liability, related to impossibility of claiming damages for breaches of contractual obligations, moral damages being sought only under tort liability. In this respect, the jurisprudence (Zeca, 2010, pp. 29-33 - ”*Regarding the ground of appeal, in that the Court has not given the amount of RON 100,000,000 as moral damages, this is also unfounded, as the plaintiffs appellants have not shown the occurrence of a moral damage, respectively occurrence of an injury susceptible to be covered by granting of moral damages. This case brought before the Court, is actually a contractual liability and not a tort and therefore, after cancellation of the sale-purchase contract, plaintiffs are entitled only to the reimbursement price (the restitution in integrum principle), and not to moral damages. All other considerations of the appellants, in that they have an advanced age, are unable to acquire another place to live and are subject to the possibility of being drawn in the street, and due to stress they fell ill etc., besides being irrelevant, are unproven in relation to the subject of the action and cannot lead to granting o moral damages in favour of plaintiff-appellants”* see Bucharest Court House, 4th Civil Section (2005) – *Absolute Nullity of the Sales-Purchase Contract,* Decision no. 700/2005) has held that ”*given that, in reality, it is about a contractual liability and not a tort liability, following cancellation*

of the sale-purchase contract, plaintiffs are entitled only to restitution of price (according to restitution in integrum principle in the previous situation)". In the field of intellectual property, considering the intertwining of moral rights with economic rights, one part of a contract can invoke the existence of a moral damage as a result of failure to comply with the clauses of the contract on economic rights acquired and transmitted over intellectual creations. Consequently, granting of moral damages under the invocation of contractual liability in the field of intellectual property is recognized by the legal practice (Zeca, 2010, pp. 66-73: "*(...) regarding infringement of the right protected by the provisions of art. 10 letter b) of Law 8/1996 (recognition of the right to claim authorship of work), from interrogations and documented evidence consisting in various comments of those who were spectators to concerts held by the band V., during litigation, the Court finds that the first Court correctly granted moral damages to the plaintiffs amounting to EUR 15,000, even if not for infringement of this moral damage, but for infringement of the economic right to consent to the use of the work. (...) the solution of the first Court on the grant and amount of moral damages, is going to be supported by the herein considerations on the basis of their grant, art. 10 letter b), and not art. 5 par. (3) of the law, being harder to conceive the situation of remedying the infringement of economic rights by granting of moral damages, but perfectly possible for infringement of moral rights to be remedied by material damages*" see Bucharest Court of Appeal (2008) – *Rights on Creation Consisting in Part and Lyrics. Joint Impartible Work. Quality of Co-Author. Co-Authors' Economic and Moral Rights*, Civil Decision no. 225A/2008).

Another effect of recognizing moral rights is the legislator's decision to include certain categories of intellectual creations in a certain area where moral rights are recognized and protected indubitably, namely the copyright area. Moral rights are recognized and protected, also in the field of industrial property, but in the field of copyright, their establishment is express and constantly applied by all the legal systems. Clearly, protection of a certain category of intellectual creation through the legal mechanism in the field of copyright leads to an undeniable advantage in terms of moral rights. The best example is the software programs. They came to be protected by the legal mechanism in the field of copyright, particularly that this is much more flexible and faster than the mechanism of inventions, which corresponds to the rapid developments in this field. To the extent that computer programs should be protected by legal mechanism in

the field of inventions, until issuance of patent following completion of registration formalities in this field, the software program would be out of date, and may come to be replaced by its newer version. However, by inclusion of the software program in the field of copyright, the program is protected from the moment of creation.

Conclusions: intellectual property moral rights represent an excessive protection of the intellectual property economic rights

Clearly, however, granting of legal protection in the field of copyright for the benefit of the author's moral rights contribute to the strengthening of his/her economic rights. In terms of national legislation, it is worth noting that in Great Britain software authors' moral rights are not recognized (Sterling, 2003, p. 351), in Germany there is no legal provision limiting software authors' moral rights (Sterling, 2003, p. 348), in France only the withdrawal and adaptation rights of the author are limited, which cannot be opposed to the person who acquired the right to use the software (Sterling, 2003, p. 346), while in Romania, the withdrawal right of the software author is limited.

Following this brief analysis, it can be argued that moral rights have been diverted from the purpose they were established for and that they fundament the excessive protection of intellectual property (Olteanu, 2010, pp. 16-20 for an introduction to theories regarding excessive protection in the field of intellectual property) by reinforcing the importance of author's intellectual property in relation to other subjects of law and intertwining of moral rights with the economic rights. Basically, economic rights, through extension of their duration, take over from the perpetuity of moral rights, while economic rights take over from authorship. Nevertheless, moral rights have a very important connotation in the context of promoting a less exaggerating protection of intellectual property to encourage freedom of commerce, freedom of access to knowledge, because they are able to reward the author even in such a new system.

For this reason is argued that moral rights represent a limitation on the artist's right and power of alienation over her creations and for that reason they are inconsistent with a Hegelian analysis of property, more precisely

with the personality theory of property associated with G.W.F. Hegel. Hegel believes that property rights are only fully consummated in the alienation of property through contract. This is because it is only through performance of reciprocal contractual obligations that two legal subjects effectively recognize their mutual rights and duties (cited in Schroeder, 2004).

Acknowledgements. This work was supported by the strategic grant POSDRU/159/1.5/S/133255, Project ID 133255 (2014), co-financed by the European Social Fund within the Sectorial Operational Program Human Resources Development 2007–2013.

References

Boyle, J. (1997). A politics of intellectual property: Environmentalism for the Net?. *Duke Law Journal*, 47(1), 87-116.

Georgescu, M., and Necula, S. (2013). The Impact of Information Piracy and Intellectual Property Rights on the Economic Development. *Proceedings of the WSEAS 2nd International Conference on Finance, Accounting and Auditing* (FAA '13) and *2nd International Conference on Risk Management, Assessment and Mitigation* (RIMA '13). WSEAS Press.

Harrison, J.L. (2014). *Copyright as Contract.* Retrieved from http://ssrn.com/abstract=2470121.

Mihai, L. (2002). *Invention: Substance of Patents: Rights*. Bucharest: Universul Juridic Publishing House.

Moore, A.D. (2012). A Lockean Theory of Intellectual Property Revisited. *San Diego Law Review*, 50 (Fall 2012), 1070-1103.

Olteanu, E.G. (2010). Copyright and Technological Progress. *The Romanian Journal of Intellectual Property Law*, 7th year, 2(23), June 2010, ASDPI, Romania.

Ken, H. (2006). Justifying Intellectual Property Protection: Why the Interests of Content-Creators Usually Wins Over Everyone Else's. In Rooksby, E. and Weckert, J. (Ed.), *Information technology and social justice* (pp. 47-68). Hershey, PA: Idea group.

Kinsella, S. (2001). *Against Intellectual Property*, Journal of Libertarian Studies, 15(2), 1-53. Schroeder, J.L. (2004). Unnatural Rights: Hegel and Intellectual Property. Cardozo Law, Legal Studies Research Paper No. 80.

Benjamin N. Cardozo School of Law, Jacob Burns Institute for Advanced Legal Studies.

Speriusi-Vlad, A. (2013). *The Author of an Intellectual Creation Between a Simple Private Person and a Professional According to the New Civil Code*. AWUT - Annals of West University of Timisoara, Law series, no. 2.

Spineanu-Matei, O. (2011). *Intellectual Property (5): Legal Practice 2010*. Bucharest: Hamangiu Publishing House.

Ştefănescu, C., Petrecu, I., and Munteanu, A. (2011). Intellectual Property in Critical Conditions. *Proceedings of the WSEAS 3rd World Multiconference on Applied Economics, Business and Development (AEBD '11)*. WSEAS Press.

Sterling, J.A.L. (2003). *World Copyright Law* (Second Edition). London: Sweet and Maxwell Publications.

Zeca, D. (2010). *Moral Damages in Civil, Criminal and Intellectual Property Litigations: Legal Practice*. Bucharest: Hamangiu Publishing House.