"Applied Arts under IP Law:
The Uncertain Border between Beauty and Usefulness"

Answers of the Hellenic Group

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1) APPLIED ARTS

a) Is the term "Applied Arts" used in the Copyright Law and/or in other legal provisions in your country?
Yes, it is used in the Greek Copyright Law no 2121/1993.

If so, is there is a legal definition of this term in your law? Please quote the relevant statutory provision and/or case law definition.
No, there is no legal definition of the term "applied arts".

Article 2 paragraph 1 of the Greek Copyright Law no 2121/1993 provides as follows:

Object of the Right: (1) The term "work" shall designate any original intellectual literary, artistic or scientific creation, expressed in any form, notably written or oral texts, musical compositions with or without words, theatrical works accompanied or unaccompanied by music, choreographies and pantomimes, audiovisual works, works of fine art, including drawings, works of painting and sculpture, engravings and lithographs, works of architecture and photographs, **works of applied art**, illustrations, maps and three-dimensional works relative to geography, topography, architecture or science.

b) What is included in the scope of the term "applied arts" in your law:
- industrial design (registered and unregistered)
- graphic design
- fashion design
- interior design
- decorative arts
- engineering design
- architecture
- photography
- other

Explain and quote/summarize relevant statutory and/or case law for each of the above. Whenever feasible, please attach the picture of the work/object considered in the case (or the relevant hyperlink).

Works of applies art are objects used for practical utility or objects industrially produced.
The Greek Copyright Law consolidates the principle of unity of art, thus it recognizes that to the extent that a work fulfills the criterion of "originality", an artistic expression should not be disqualified merely because it is fixed or embodied in a utilitarian article.

According to the case law are protected as works of applied art: jewelry, porcelains, carpets, bronze objects, dolls, furniture, toys, leather goods, provided that they fulfil the element of the concept of the work, the condition of originality.
Architectural works and photographs are separate categories of protected works and they are not considered as works of applied art.

Quote any legal provisions and/or case law highlighting the relationship and/or distinction between:
- applied arts and fine arts
- applied arts and technical solutions for products/methods or principles of construction
- applied arts and products of craftmanship
- applied arts and the role of computer aided design (CAD software)

2) TYPES OF PROTECTION APPLICABLE TO APPLIED ARTS

a) What forms of protection are granted by law or case law in your country for each of the items under 1.b) above?
- copyright
- industrial designs (registered and unregistered)
- trademarks
- patents/utility models
- unfair competition
- other

-The protection of a work of applied art by copyright law requires the element of originality.

-Works of applied arts are also protected as industrial models and designs by Law no 2417/1996 (ratified The Hague Arrangement), Decree no 259/1997 and Decree no 161/2002 (incorporated the EU Directive no 98/71/EC). According this statutory “design or model” means the externally visible image of the entity or of a part of a product, which is the result of its particular characteristics. In order to be protected a design or a model has to be “new” and “of an individual character”. This system is formal and requires deposition to the Greek Organization of Industrial Property.

- A trademark right may be acquired by way of registration; a trademark may consist of any sign capable of distinguishing the goods or services

- From this one may conclude that the following types of design may be patentable in so far as the design encompasses an innovation; susceptible of industrial application

-Protection is also possible under the provision of Law no 146/1914 on unfair competition provide that the requirements for the application existed, e.g. unfair character of the action, distinctive characteristics, or entrusted designs.

b) Can more than one form of protection be granted to one product? Under which conditions? Cumulatively or exclusively?

To the extent that a product meets the criteria for protection provided in the special laws, then the different types of protection are applying cumulatively.

c) Specify for each form of protection:
- the types of rights granted

- limits and exceptions
- duration of the protection
- threshold requirements for protection, e.g. originality, novelty, distinctiveness
- formalities to obtain the protection (if any)
- original owner of the right
- who has the right to sue
- treatment of foreigners
- any other element affecting/determining the protection

	Copyright	**Industrial designs**	**Trademarks**	**Patents/utility models**	**Unfair competition**
Types of rights granted	Intellectual property right that includes exclusive economic and moral rights Economic right: The fixation and reproduction right, right to adapt, the right to distribute, the right to communication the work to the public, the right of importing copies from countries outside the EU, the resale right. Moral right: Disclosure and dissemination, attribution of authorship, integrity of the work, access to the work, withdrawal of the work.	Intellectual property right, with economic prerogatives, but without moral aspect.	Intellectual property right, with economic prerogatives, but without moral aspect.	Intellectual property right, with economic prerogatives, but without moral aspect.	Civil law of liability (compensation for damage)
Limits and exceptions	Articles 18-28 of L. no 2121/1993 Temporary, transient and incidental reproduction according art. 5.1 of Directive 2001/29, reproduction for private use, for information purposes, state use, use of images of works sited in public places, reproduction in catalogue in case of exhibition of a work of fine art, quotation, reproduction for the benefit of blind and deaf-mute.	Article 26 § 3 of Decree no 259/ 1997 The rights conferred by a registered design right do not extend to: - private actions taken for non-commercial purposes, - acts done for research purposes, - acts of reproduction design to quote examples or in the context of teaching, provided that such acts are compatible with	Article 126 of L. no /2012 The right conferred by the mark shall not prevent third parties from using: - the indication if is similar with their name, surname and address, - indications concerning the kind, quality, purpose, value, geographical origin, time of production of goods or services, or other characteristics,	Article 10.2 &3 of L. no 1733/1987 The holder of a patent may not prohibit the following activities: - The use of the invention for non-professional or research. - The use of the invention built in an automobile, train, boat or aircraft that temporarily enters Greece. - Under certain circumstances, the preparation of a medicine in a pharmacy for a specific individual medical	No specific restrictions.

		fair trade practice and do not unduly prejudice the normal exploitation of the design, and mentioned the source, - on ships and aircraft equipment registered in another country when these temporarily enter the territory of the Greek territory, - in the importation in Greece, spare parts for the repair of ships and aircraft.	- the sign itself, if this is necessary to indicate the purpose of the good or service, in particular as accessory or spare part, if the use is in accordance with honest commercial practices. - from using the indication/sign in trade, if an earlier right is locally therefor recognized.	prescription and the availability and use of this drug. The person who operates the invention or has made the necessary preparations for holding, at the time of filing an application for patent by a third party or the date of priority has the right to continue using the invention for his business.	
Duration of the protection	70 years from the 1st of January of the year following that of the author's death. Moral rights of attribution of authorship and integrity of the work are perpetual.	5 years from the date of filing of the application, renewable every 5 years and overall up to 25 years.	10 years from the date of filing of the application, renewable every 10 years perpetually.	20 years from the date of filing of the application.	Lapse of claims: 18 months from when the injured party became aware of the harmful act and at the latest after 5 years.
Requirements for protection	Originality	Special features and novelty	Distinctiveness and novelty	New invention with an inventive step, susceptible of industrial application	Confusion or parasitism
Formalities to obtain the protection	None.	Filing with OBI (Organization of Industrial Property)	Filing with OBI (Organization of Industrial Property)	Filing with the special service for trademarks in the Ministry of Trade.	None.
Original owner of the right	The author, i.e. the human being who actually created the work. Exceptionally legal entities can be vested by copyright in case of anonymous, pseudonymous, or posthumous works.	The natural or legal person who files the application.	The natural or legal person who files the application.	The inventor or the right holder. If the invention is made by an employee shall belong to him (free invention), unless it is a service invention, and in that case either it wholly owned by the employer, or it is a dependent invention and then the right belongs by 40% to the employer and by	The victim of the unfair competition.

				60% to the employee.	
Who has the right to sue	The author or the stakeholder.	The right holder or the licensee.	The right holder or the licensee.	The right holder or the licensee.	The victim of the unfair competition.
Treatment of foreigners	National treatment under the Berne Convention and TRIPs Agreement (principle of the assimilation of foreigner to national). In case of no treaty by virtue of reciprocity.	National treatment under the TRIPs Agreement (principle of the assimilation of foreigner to national). In case of no treaty by virtue of reciprocity.	National treatment under the TRIPs Agreement (principle of the assimilation of foreigner to national). In case of no treaty by virtue of reciprocity.	National treatment under the TRIPs Agreement (principle of the assimilation of foreigner to national). In case of no treaty by virtue of reciprocity.	Application of the rules of conflict of law.

3) 3D PRINTING

A session of the Congress is devoted to the analysis of the problems raised by the development of the 3D printing technology, the increasing availability of 3D printers and the digital dissemination of 3D modeling software both for commercial purposes and for private usage.

The expression "3D printing" is currently used to indicate various processes employed to synthesize and reproduce a three-dimensional object. It is also known as additive manufacturing (AM), but this definition is reductive since, from a file, there may also be a manufacturing process obtained by removing material. In the 3D printing, successive layers of material are formed under computer control to create or reproduce an object. A 3D printer is a type of industrial robot, controlled by specific software that can be either proprietary, or acquired by license, or open source.

The 3D printing could stem from a 3D modelling or a tridimensional digitalization of a pre-existing object (that can be a model or a work). The 3D modeling is the process of developing a mathematical, three-dimensional representation of all the surfaces of an object via specialized software. The 3D model can be displayed as a two-dimensional image or can be physically created using 3D printing devices. The objects are produced from a 3D model, or file, or from other electronic data source.

The 3D technology can be used also for the 3D digitalization of existing physical objects, resulting in digital files (the reverse of 3D modeling).

The issues relating to the applicability of Intellectual Property in 3D printing can be subdivided into two categories:
i) Issues and rules relating to the software, designs and devices employed for the production of 3D objects. This category is not affected by the features and the nature of the printed 3D object.
ii) Issues relating to the applicability of Intellectual Property in the creation of files and in the 3D printing of objects that are protected by Intellectual Property. For example, in Museums, the use of the 3D printing technology (digitalization and printing) can extend both to the replication and restoration of artifacts for on-site display and to the educational mission of the institutions with outside delivery of their artifacts.

This Section of the questionnaire is meant to survey the current situation and trends (possible evolution of solutions) in the legal framework applicable to the 3D printing ecosystem. For this

purpose, please take into consideration the description above, but feel free, if you believe it useful, to add any other details and comments that you deem necessary.

You are requested to you answer the following questions to the end of showing the practices, the questioning and the legal responses, existing or expected. These latter can result from the application of legal or regulatory solutions - general or specific - or from court decisions or soft law.
NB: The questionnaire is long enough to enable a better understanding of the issues and answers. It is obvious that those people called to respond can do so synthetically and answer only some of them.

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1) Overview

a) Is there reason to distinguish, in legal terms, depending on whether the three-dimensional object is reproduced by an additive manufacturing process or by a material-removing manufacturing process? Do you believe that additive manufacturing requires a special legal treatment?

The result of the process seems to be mostly important as far as intellectual property law is concerned. Therefore a special legal treatment for one of the two processes doesn't seem necessary, at least not at the moment. Under Greek Copyright, whether for example the sculptor is creating a statue by a removing process (carving marble) or by additive process (for example putting together pieces of metal or glass) is not decisive. The work -once expressed- it will be protected if it presents the necessary levels of originality.

b) Are there been, in your country, public or private initiatives aiming at supporting and legally framing the printing of three-dimensional objects? If this is the case, can you summarize the main lines and conclusions?

No, there have not been any initiatives on the legal framing of 3d printing.

c) Several different steps can be distinguished in the chain of 3D printing: modeling/scanning (by acquisition device or CAD software), digital distribution of 3D models, printing of three-dimensional objects. Do you believe that there are other important steps requiring specific legal analysis?

The identified steps are the most important steps. Each one of them, taken separately, raises several issues. For example the modeling and scanning a)if they are creative and present the required level of creativity they may be protected by Copyright; b) could be infringing third parties rights or c) could be protected by Copyright and infringing third party's rights if permission has not been given for modeling and scanning (protected for the part created if original and infringing for the part reproducing the preexisting work). Printing raises issues related to reproduction (such as private copying etc.) and digital distribution raises issues similar to MP3 file sharing, making works available without authorization, intermediaries liability issues etc.).

2) 3D modeling / Creation of the file that will allow, downstream, the reproduction of an object with a 3D printing process

a) If a pre-existing (two or three-dimensional) object is scanned/digitalized or modeled, must we consider that the person who carried out the digitalization or modeling can claim rights to the file? If so, under what conditions?

It depends on the creative contribution of the person digitalizing or modeling the preexisting object. Three cases may be distinguished:

1. The person proceeding with the digitization/modeling of the object has created the protected by Copyright object. He has rights on the object and on the file.
2. The person proceeding with the scanning/modeling of the object is only using a software program, executing specific orders dictated by the designing norms and principles without any creative contribution, just by executing a technical know-how; in this case no rights can be claimed.
3. On the other hand if the person digitizing the object is creatively contributing to the scanning or modeling then rights may be claimed under certain conditions. This would be the case for example if the person digitizing the object does not have all necessary information to proceed with the 3D scanning and needs to add information; if this information added presents creativity and is original, then(under certain circumstances) rights could be claimed. Let's suppose for example that one wants to make a 3D scan of an object for which he/she has only the front part image and maybe one side, but all the rest is missing. If the person modeling the object creates on its own these sides speculating the missing forms, such contribution could be creative and could be protected by Copyright. Of course it is possible that such contribution leads to the creation of a derivative work; in this case the transformation/adaptation of the preexisting work could be infringing the economic and moral rights of the author/right holder of the preexisting work.

In principle, if the object produced is identical to the object scanned and the person proceeding with the modeling/digitization will not have any creative character and will be made following specific know how, and the person who digitalized cannot prove its own original creation.

b) Is the modeling and the 3D scanning/digitalization of an object for private use allowed by the law in your country, and if so under what conditions? Distinguish, if necessary, according to the nature of the modeled or scanned/digitalized object (work of the spirit, model, invention ...) or the source of the used object. What about acts made for non-private use?

Modeling and 3D scanning/digitalization are not explicitly included in the provisions of the law. Still, ar. 18 of the copyright law 2121/1993 allows a user to "make a **reproduction** of a lawfully published work for his own private use". The notion of reproduction has been interpreted broadly enough by Courts to cover the above mentioned acts since it has been defined as the act of multiplication of the work (in whole or partially) independently of the quantity or the number of the copies, in any form, by any means or way, in a tangible or an intangible layer, temporary or permanent, direct or indirect, willfully or not (See indicatively Supreme Court 152/2005, Court of Appeals of Athens 931/2000, Court of Appeals of Athens5866/2003, Court of Appeals of Piraeus 701/2003, court of First Instance of Athens 2519/1997 etc.). Therefore the mentioned acts are covered by the scope of definition of the reproduction act.

Reproduction for private use based on copyright law on the other hand is allowed:

a) For lawfully published works: in principle that refers to the act of publication of the work with the consent of the author. Although the law does not explicitly mention the legality of the source, the doctrine accepts that this also constitutes a condition for the application of the limitation (Kallinikou, Photocopying of an entire book in copy centers without the authors permission, Chronika Idiotikou Dikaiou 2005, p. 289, Vagena, The legal source of the copy as a condition for the application of the private copy exception in copyright law- commentary on the decision Cour d'appel d'Aix en Provence, Arrêt du 5 septembre 2007, DIMEE vol. 1/ 2008)
b) For all kinds of works apart from architectural works in the form of a building or similar construction, graphical representations of a musical work and re[productions by technical means of fine art works which circulate in a restricted number of copies

c) when it is not likely to conflict with normal exploitation of the work or to prejudice the author's legitimate interests

Private use is interpreted a contrario to the notion of public use as the use made by a person himself for his own use or for a use in the strictly defined circle of family or social entourage while it is explicitly stated in the law that the term private use does not include use by an enterprise, a service or an organization. Any act which is not made for private use as defined above is subject to license by the rightholders.

According to ar. 26 par. 3 (a) of the Presidential Decree 259/1997 about models and designs protection acts done privately and for non-commercial purposes are allowed.
(art. 26 Presidential Decree 259/1997 "The rights conferred with a design or model upon registration shall not extend to:
a. acts done privately and for non-commercial purposes;
b. acts done for experimental or research purposes;
c. acts of reproduction of a design or model for the purposes of making citations or of teaching, provided that such acts are compatible with fair trade practice and do not unduly prejudice the normal exploitation of the design, and that mention is made of the source.
d. the equipment on ships and aircraft registered in another country when these temporarily enter the Hellenic territory;
e. the importation in Greece of spare parts and accessories for the purpose of repairing such ships or aircraft.
f. the execution of repairs on such ships or aircraft."

According also to ar. 10 par. 2 of Greek patent law 1733/87 the use of the invention for non-professional or research purposes is permitted.

(art.10 par.2 of Law 1733/1987: "2. The owner of the patent may not forbid, in the meaning of the preceding paragraph, the following activities:
a. The use of the invention for non-professional or research purposes;
b. The use of the invention built in an automobile, railway, vessel or airplane entering the Greek territory on a temporary basis;
c. The preparation of a pharmaceutical product in a pharmacy for a specific individual, following medical prescription as well as the dispensing and use of said pharmaceutical product under the reservation of article 25 paragraph 3 of the present Law."

c) When modeling or three-dimensional scanning for private use is permitted by the law (application of general law or special text), is this accompanied by a compensation mechanism in favor of the right-holders of the printed object? If so, can you specify the methods of collection and distribution?

In general right holders (authors and related rights holders) are entitled to an equitable remuneration in compensation of the private use of their works. Levies are calculated on the value of the "technical media" used for the reproduction of their works. The term technical media encompasses indicatively as the law provides recording equipment, devices for the reproduction of sound or image or sound and image, photocopy machines, photocopy paper and scanners. The remuneration is paid by the importers or producers of such items and is noted in the invoice; it is collected by collecting societies operating with the approval of the Ministry of Culture and

covering in whole or in part the concerned category of beneficiaries according to the mentalities provided in ar.18 par. 3 of law 2121/1993 (see http://opi.gr/index.php/en/library/law-2121-1993#a18)

3) Dissemination of 3D models / Making available of files for 3D reproduction

a) Are there in your country websites legally distributing 3D files, for free or for a fee? If so, can you specify the business model and the legal model (licensing models, liability, etc.)?

Although Greek websites legally distributing 3D files do not exist, it seems that all foreign platforms distributing such files are accessible from Greece (repositories, market places and search engines offer 3D printable models for free or under payment, while some offer the opportunity to request a custom design and interact with the designers directly on the site). There are also websites providing 3d printing services and giving directions on how to create a 3d file.

Are there in your country platforms allowing users to share 3D files? If so, do these platforms raise legal problems (distribution licensing models, unauthorized making available ...)? Has there been any litigation? To your knowledge, did the right-holders conclude contracts with this type of platforms to authorize the making available of models created by users? If so, how the question of moral rights has been perceived.

We are not aware of any platforms allowing users to share 3D files and there is no litigation. Platforms offering 3D files, in some cases also permit uploading of such files. The platforms in order to anticipate possible legal issues, they are setting terms of use with disclaimer clauses and other terms safeguarding the platform provider to the maximum extend. In general lines it seems that the terms of use do not create a safe legal environment for both the user and the author of the design.

4) 3D printing / Reproduction of a work, a model or any other object protected by intellectual property rights

a) Is in your country the 3D printing of an object for private use authorized by law (special law or application of general law), and if so under what conditions? Distinguish, if necessary, according to the nature of the modeled or scanned object (work of the spirit, model, invention, etc.) or the source of the file used. What about acts made for non-private use?

See answers above under 2 (b)

b) When the 3D printing for private use is permitted by the law, is this accompanied by a compensation mechanism in favor of rights-holders of the printed object (and if so, which ones)? If applicable, can you specify the methods for collection and distribution? In general, do exist in your legislation legal license mechanisms or compulsory collective management benefiting different categories of intellectual property rights-holders (for example, copyright and designs and models)?

In any case when a work protected by copyright is reproduced through 3d printing for private use there should be remuneration through the procedure described above under 2 (c) for copyright holders.

There is no remuneration provided for the right holder in case of permitted use of a design or an invention.

c) How does your legislation consider the activity of a service provider that prints 3D object at the request of an individual, for his private use? Is this service provider responsible for the acts of reproduction carried out? If so, can it absolve itself, totally or partially, of this responsibility?

There has been no specific provision or litigation on this issue targeted specifically on 3d printing providers.

Nevertheless there has been a debate on the question whether it is permitted to claim private use when the reproduction is made by a third party on behalf of the beneficiary user. Part of the doctrine has claimed that if it is accepted that the user may benefit only if he makes himself the reproduction, the scope will be unfairly narrowly restricted and it would deprive all users who do not have the technical means themselves to benefit from the limitation. The majority of the doctrine nevertheless accepts that as it is explicitly stipulated (ar. 18 par. 1 of law 2121/1993) it is permissible *"[…] **for a person** to make a reproduction of a lawfully published work **for his own private use** [...]"* and in this direction the explanatory report of the law has clearly stipulated that the user must make himself the reproduction in order to benefit from the limitation. This has been also verified by the case law (see Court of Appeals of Athens 4169/2005) and by the majority of doctrine(see for example Kallinikou, Photocopying of an entire book in copy centers without the authors permission, Chronika Idiotikou Dikaiou 2005, p. 289, Konstantinidis, Copying for private use , DIGESTA, 2000, p. 136)

d) Are there in your country websites offering 3D printing services on demand? If so, do the users have the option to share the object transmitted for printing? Are these websites implementing control measures of the transmitted or shared objects (control keywords, fingerprinting ...)? What is under your legislation the liability regime applicable to those websites (distinguish, if necessary, according to the nature of the service provided)?

There are sites which offer you the possibility of creating a CAD file for example and upload it to the site of the company executing the 3d printing, if this can be considered as an on demand service (see for example http://www.hellasprototyping.com/).
We are not aware if these sites use any control measures but in most cases it seems that there is not any possibility of sharing the uploaded file. Therefore, the liability of the site will be judged upon the provisions of the e-commerce directive as implemented in the national law (Presidential Decree 131/2003) on the issue of the hosting service since the copy is hosted in its servers.

5) Technical protection and information measures

a) In the light of possible precedents in your country, does it seem to you that the apprehension of 3D printing acts within the private sphere through technological protection measures implanted in 3D printing devices or software is appropriate and feasible?

There has not been a national case involving the restriction of private copying by the use of a technological measure of protection (TMP). In theory, it has been supported that it is legally permissible to restrict the private use of a work wherever possible through TMPs (Vagena, the technological protection and digital management of copyright, Nomiki Vivliothiki, 2011, p. 277).

b) Are there in your country regulatory precedents or soft law aiming to impose to an industrial sector the implementation of technological protection measures to prevent copying?

No there has been no relevant precedent or soft law.

c) Are there in your national legislation legal obligations to adapt certain categories of software to security standards? If so, how are these obligations applied in the field of free software?

No there are not any provisions in this direction.

Are digital signature or watermarking techniques (fingerprinting, watermarking, etc.) likely to be implemented to monitor and control the distribution and/or printing of 3D models? Is there any of such devices in your country? If so, can you describe it? In case it is or will be used a database of protected 3D models, what are or will be the obligations of the technical service? And what is or will be the consequence of the lack of registration of a model in such a database

We are not aware of any business practice or legal stipulation in this direction.