

## **Abstract – Copyright and Advertising**

Advertising, as a rapidly evolving social phenomenon based on the promotion of goods and services, consists of copyrighted works that it creates or uses. Advertising work is often considered to be a unique result of creative intellectual activity, could it not therefore meet the conceptual characteristics set out in the Copyright Act and receive the same protection?

If the advertisement includes a copyrighted work, artistic performance or other value protected by the copyright law, the advertiser, the client or other party in the advertising sector must deal with the copyright properly. The way to address it is set out in the Copyright Act.

Could a person involved in making advertisements or an ad agency employee be the author? Does the legislation reflect the actual situation in the advertising sector at a time when advertising law contains public, private and ethical norms?

This thesis is not just a description, but aims to analyse the legal regulation of copyright with a closer focus on copyrighted works in the context of advertising activities and their creators. The first analytical part deals with the development of copyright law with emphasis on the resulting separation of the material medium from the product of creative intellectual activity, i.e. the separation of property right and copyright.

Copyrighted works, their conceptual characteristics and types, as well as special legal regimes applicable to certain works, custom-made works and works for hire, where a different legal regime for the transfer of property copyright applies, are examined.

The main topic of the thesis is a legal analysis of the formalities and forms of agreements allowing the use of protected property created by the originator. These agreements are known by law as licenses and may be exclusive, non-exclusive, and limited in the manner of use of the work, in time, place, or agreed to as unlimited. The law provides for the possibility, if the license agreement allows it, for the licensee to assign the license – in such case, it is referred to as a sub-license agreement.

In defining the exceptions and limitations to copyright, the paper seeks an answer to the question of whether an advertising message can be considered a copyrighted work. Advertising creators are striving to bring the commercial role of advertising closer to art, and the use of copyrighted works in advertising is gradually becoming essential. In practice, this is also why those involved in ad making often use copyrighted works without authorization, as discussed in the second half of this paper. The thesis analyses the ways of using copyrighted works under contractual and non-contractual arrangements and, subsequently, the topic of statutory licenses in more detail.

Considering the relatively broad topic of the thesis, it was decided to also include the rights related to copyright law. A separate chapter discusses in more detail the rights that are found in advertising works and points out that it is necessary to enter into licensing agreements with the originators of copyrighted property in order to prevent unauthorized use.

In addition to nominal licensing agreements, parties involved in advertising can also be legally bound by an advertising contract, which is specified in the chapter on advertising law. This part of the thesis deals with the question posed in the introduction, i.e. whether and under what conditions those involved in ad making, as an employee of an advertising agency or in a similar relationship with an advertising agency, can fulfil the statutory characteristics of a work's authorship.

The thesis concludes by applying the theoretical findings from the previous sections to specific cases from the Czech case law where ad making conflicts with copyright law and finds that there is an insufficient number of cases decided on the merits.

The terms “advertising work” and “advertising message” are used synonymously or as terms of similar meaning. The term “advertising work”, which is not defined by law, is not to be confused with the term “copyrighted work”.

The thesis is based on the legislation in force as of 1 November 2022, the literature, the case law of Czech and European courts, as well as media articles in periodicals and on the Internet, taking into account the absence of more extensive literature.

The aim of this Master's thesis is to find an answer to the questions posed above in the legal system of the Czech Republic, to analyse the current legislation dealing with the protection of authors' rights and copyrighted works in advertising.

## **Key words:**

- Copyright, advertising, copyrighted work, license