**Introduction to the Comparative Entertainment Law**

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**Time required for reading, including the .ppt files and solving the relevant tasks: 45 minutes**

1. **Introduction**

During the course the participants will be familiarized with the several actors of the entertainment industry (performing artists, music publishers, producers of cinematographic works, radio and television organizations, authors of creative audiovisual softwares) and all the international and European legal instruments in the field of copyright and related rights as well the right of publicity. The theoretical frameworks will be filled with practical experience through international and European court cases with the relevant international and European contractual practices with special regard to the different license agreements.

After completing the course, the participants should be able to separate the different actors and their legal and economic interest of the creative industry, the overlaps between works of the copyright holders and other achievement created by the related rights holders, and last but not least the legal provisions regarding the different actors of the creative industry.

1. **Law Enforcement**

Intellectual property is protected by several international agreements and by series of European directives. These pieces of legislation not only provide protection to copyright and related right holders but also gives a framework which can be called up in case of infringement of intellectual property rights. In online environment unlawful acts are not easy to detect. Infringing acts usually committed by third parties using the website of a given service provider. To remedy harms, the European legislator adapted several measures and instruments making it possible to notice the infringements so that the ISPs will be able to remove the infringing content or even to block access to some particular websites.

This Chapter is going to focus solely on digital law enforcement. By observing the history of law enforcement in the digital society a tendency is evident. Based on the legal tradition and tools known from the analogue world, right holders first tried to act against individual infringers. That effort was unsuccessful, as digital technology makes impossible to detect each and every illegal uses of a work. In the second phase of the history of the law enforcement, right holders tried to focus on intermediaries. These intermediaries operated a service which, in most of the cases, was profit-oriented. Good examples can be found in the field of file sharing platforms, such as the Pirate Bay. The efforts were insufficient, therefore in the third phase the internet service provider (ISP) were targeted. The aim was to force ISP to make infringing websites unavailable to the public, to put it simply; to block access to them. Law enforcement against third parties, that themselves do not carry out the actual infringing act, caused huge debates in those countries, where ISPs were sued by right holders. ISPs argued that their activity is the mere provision of technical facility, which might be used for infringing acts. Forcing them to actively monitor the dataflow going through their systems is against for example the right to conduct business.

The new Millennium induced interesting legislative efforts. The outcome was new rules adopted in the field of electronic commerce. The new E-commerce norms, such as the E-Commerce Directive of the European Union (2000/31/EC) not only defined the different types of ISPs according to their business models and technology, but also set up standards and rules regarding their liability. The common denominator of these liability rules is the *knowledge about the infringement.* If the ISP can prove that it does not have actual knowledge about the infringement, its direct liability can be exempted.

Legislative steps were also taken in order to provide tools to remove infringing contents from the Internet. The well-know *notice and takedown* regimes of contemporary copyright systems contains regulations and procedures to that case, when an infringing content was found on a website. The right holders have the possibility to notify the infringement and the notified operator have to remove immediately. If it does not comply with the notification by missing to remove the content, it might face further legal steps.

Digital market places and other online social media platforms triggered a new wave of legislative steps. These steps were taken by the European legislator to reform the existing norms on the actors of the Internet. The CDSM Directive (Directive on the Digital Single Market) bring new rules into the only law enforcement and defines a new category of ISPs, the Online Content Service Provider. Their network and business model highly depends on user generated content which, in most of the cases, might contain copyright protected works and other subject matters. By extending the liability for third party contents, the ISPs will be forced to actively monitor the uploaded user-generated contents.

**Tests, questions and selected case law:**

**Digital Law Enforcement**

1. What measures of the 2004/48/EC Directive the right holder can rely on in case of an infringement?

2. Is a host service provider liable for infringing contents of third parties? If yes, why?

3. Please enlist the types of ISPs regulated by the E-Commerce Directive!

4. Please enlist the cases when an ISP can exempt its liability for third party’s infringement!

5. Which norm regulates the safe harbor doctrine in the European copyright law?

6. What is the main rational of the safe harbor doctrine?

7. Can a right holder obligate an ISP to generally monitor each and every dataflow over its network? Please explain why, or why not!

8. How will the liability of ISPs will change after the implementation of Article 17 of the CDSM Directive?

# Selected case law:

Holland v. Vivian Van Damn Productions Ltd. [1936–45] MacG. Cop. Cas. 69 (Ch. D.)

Keller v Electronic Arts, No. 10-15387, 2013 WL 3928293 (C.A.9), (July 31, 2013).

Hart v Electronic Arts, No.: 09-cv-5990 (FLW)

SABAM v. Scarlet C-70/10

Promusicae v. Telefónica C-275/06

C-265/19. Recorded Artists Actors Performers Ltd v. Phonographic Performance (Ireland) Ltd., Minister for Jobs, Enterprises and Innovation, Ireland, Attorney General.

**Recommended readings:**

1. Megan Richardson - Sam Ricketson (Ed.): Research Handbook on Intellectual Property in Media and Entertainment, Edward Elgar, Cheltenham, 2017.

2. Ruth Towse - Christian Handke (Ed.): Handbook on the Digital Creative Economy, Edward Elgar, Cheltenham, 2013.

3. Pascal Kamina: Film Copyright in the European Union, Second Edition, Cambridge University Press, Cambridge, 2016.

4. Ruth Towse (Ed.): Copyright in the Cultural Industries, Edward Elgar, Cheltenham, 2002.

5. Mezei Péter – Harkai István: Enforcement of Copyrights over the Internet. A Review of the Recent ECJ Case Law, *Journal of Internet Law Review,* Vol. 21, No. 4, October 2017.

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| **Types of ISPs in the E-Commerce Directive and in the 2001:CVIII act of E-Commerce** | |
| **“Mere conduit” [Art. 12; 2. § la)]** | Information transmitted via communication network;  Provision of access to a communication network. |
| **“Caching” [Art. 13; 2. § lb)]** | Information transmitted via communication network;  Automatic, intermediate and temporary storaging. |
| **“Hosting” [Art. 14; 2.§ lc)]** | Storage of information. |
| **“Searching” [2.§ ld)]** | Providing tools for searching. |

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| **Exeption from Liability** | |
| **Mere conduit (Art 12; 8. §)** | Does not: initiate the transmission; select the receiver; select or modify the information. |
| **Caching (Art. 13; 9. §)** | Does not: modify the information; interfere with the lawful use of technology.  Complies with: conditions on acces to the information; rules regarding the updating.  Acts expeditiously to remove/diseable access. |
| **Hosting (Art. 14; 10. §)** | Does not: have actual knowledge.  Acts expeditiously to remove/diseable access. |
| **Searching (11. §)** | Does not: have actual knowledge.  Acts expeditiously to remove/diseable access. |

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