

# **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**

## **I. 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. The Motion Picture Industry**

Creation of films is rather an expensive venture. It requires enormous amount of stuff, organization, technological background, excellent actors and actresses and last but not least an exciting storyline. The highest return can be realized if a film producer creates a whole new universe which can provide enough gunpowder for a sequel of new and new episodes. Such epic sagas later can serve other business models, such as the character merchandising, when figures of a block buster movie will be sold on coffee mugs, T-shirts and several other example could be enumerated.

The motion picture industry is rather a capital-intensive sector of the creative industry, which basic business model highly relies on the outcome of creative works: authors' works and the achievements of the related right holders. International and European norms, as well as the Hungarian copyright act grants authors' rights to the authors of the films, who are the author of the literary and musical works within the film, the director and every other person, who make creative contribution. The producer of the motion picture organizes the process of production and provides the necessary financial and other conditions. Film makers are also granted with certain economic rights, that cover all the relevant uses which might come into consideration when a film is disseminated to the public and exploited.

As authors' rights are granted to several contributors, and related rights are also granted to the performing artists, the protection of motion picture is multi-layered. The performers authorize the use of their performances to the producer, so as the authors of the different parts of the motion picture, which can be labeled as a typical example of the works made for hire.

In the European level, the Information Society Directive (2001/29/EC) expressly grants the protection of the right of reproduction to the producers of films regarding the first fixation of films, and also the original and copies of their films. The communication to the public right – which is a broadly defined right, that covers every communication related uses of the given work, including the right of making available to the public – is also granted to the producers of films regarding the first fixation and every copy made of the first fixation. The rental and lending rights are protected to in case of motion picture. Another European legal instrument, the Rental and Lending Rights Directive (2006/115/EC) also deals with the products of the motion picture industry. It expressly defines what should be considered as film in Article 2 1. (c). According to this definition, films are cinematographic or audio-visual works or moving images, whether or not accompanied by sound.

As it was highlighted, the film itself is a rather complicated type of work, in which several contributions are merged together. These contributions might be protected by authors' rights or related rights, such as performers or phonogram producers. Meanwhile the producer also enjoys protection. The exercise of the above mentioned separate rights requires the *transfer* of rights to the producer, who then will be entitled not only to use the film itself – *id est.* to exploit it – but to license the use to third parties.

Films highly rely on the existing cultural environment, which provides topic to the creators of films. The outcome of this branch of the cultural industry might be based on for example a novel, so the right of adaptation of that novel have to be licensed to the film producers. This example also demonstrates the fact that one of the most complex branch of the entertainment industry is the motion picture industry. This industry has high relevance in the cultural policy, as it is also true to the radio and television organizations. As a block buster movie can be viewed by millions or billions of people, the content and the message, that the film itself convey, might be able to transform the opinion of the audience, or at least to influence it.

Products of the motion picture industry are sold, rented or sold on a massive scale. Physical copies, after reproduced on a data carrier, can be sold in a brick and mortar shop (retailer) or can be rented. They also can be performed in a cinema or broadcasted in the television. In the last two decades the digital market has grown to one of the largest and most important segment of the market of films. The digital stores can be operated either by the motion picture producers, such as Disney+, or by competitors, such as Netflix. Netflix used to rented DVDs, but later it launched its online service. Today Netflix has its own branch for film production. Television broadcasting organizations also discovered the advantages of online dissemination and launched the Hulu, which disseminates creations related to television organizations.

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

### **The motion picture industry**

1. How does the Rome Convention regulates the performers' rights in films?
2. Which economic rights are granted by the InfoSoc Directive to the producers of films?
3. Why rental is an important economic right in case of films?
4. Which European legal instrument provides rules on rental and lending rights?
5. If rental and lending of films is outdated, why is that so, and which other economic right and business model can come into consideration regarding the dissemination of films?
6. How does 2006/115/EC Directive regulates the relationship between copyright and related rights?
7. Which international treaty protects the rights of audiovisual performers?

**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.

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