

# **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. Sport Databases and e-Sports**

Professional sport has always been popular and it has always attracted investors in several ways. Regarding the intellectual property two segments should be mentioned. One is broadcasting of sport events, which is mentioned in the chapter dealing with broadcasting organizations. (For quick review of the economic rights granted by international and European norms, please see the table below!) The other one is related to the tremendous amount of data generated by sport events. This pile of information serves as a specific raw material for investors that are willing to exploit the dataset related to professional athletes, contests, matches. During one particular football match valuable data is being generated. It can be the distance a player runs during the game, can be the number of dribbles, passes and assists he completed and the goals he scored. The information gathered from a contest can be useful not only for the managers and coaches when they putting together the squad for the next game. Cumulated information collected from a specific player contributes to the worth of that given athlete.

Sport databases operating electronically over the Internet are widely available for the public, distributing literary every information related to sporting events. This collection of data should be protected. Protection was granted to the right holders of databases by the Database Directive adapted by the European legislator. The European legislator granted two layers of protection. Databases are subjects to copyrights and sui generis rights. Those elements or segments of the databases which are original in nature, the Database Directive establishes copyright protection. Those parts of the databases can be considered as original, which are collected and organized in an original way. Those parts which are not protected by copyright, but the legislator recognizes the effort and investment of the creator, are protected by sui generis rights. According to the Database Directive (96/9/EC) Databases are collections of

independent works, data or other materials, arranged in a systematic or methodical way and individually accessible by electronic means. It is important to note, that the copyright protection provided to the creators of databases, does not extend to the content itself, which can also be protected by copyright. The term of protection expresses the unique nature of databases. As data regularly contains information, which cannot be monopolized, the protection of databases last shorter than the normal duration of the term of protection. Databases are protected for 15 years.

E-sports is a completely new way of “sporting”, which attracts more and more people. It is estimated that in 2021 the number of audience will exceed the 250 Million. The e-sports revenues in 2018 were more than 900 Million US Dollars. This is not part of the traditional ways where competitors are competing with by exploiting the sources and strength of their own body. “Athletes” of e-sports are using their skills that gained during playing computer games. E-sports are gathering and conquering more and more space in the entertainment industry. During the competitions at least two aspects of intellectual property rights are concerned. On one hand, e-sports necessitate a computer game to play with. Computer games are softwares. (Video games and the video game industry is discussed in Chapter 10-11.) E-sports, such as traditional sport events attract thousands of people. To reach their community, sporting events have to be disseminated to them. To disseminate sporting events, online platforms and broadcasting organizations have to exercise the right of communication to the public.

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

### **Sport Databases and E-Sports**

1. What is the rationale of database protection?
2. What is the difference between sui generis protection and copyright protection of database?
3. Does extraction cover the reproduction of the database?
4. Which are the exceptions to the sui generis right?
5. Which are the exceptions to the copyright in databases?
6. Who are the beneficiaries of the protection under the sui generis right?
7. Which stakeholders are concerned with e-sports and why?
8. Which economic rights are concerned when an e-sport event is disseminated to the public?
9. Please describe the ways of online dissemination of e-sport events!
10. Which economic rights are concerned when an e-sport player uploads in-game videos to his account created in an online content platform?

### **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.

### Economic Rights of Radio and Television Broadcasting Organisations in the International and European Copyright Regime:

	Rome Convention <sup>1</sup>	TRIPS Agreement	2001/29/EC InfoSoc Directive	2006/115/EC Rental Directive	98/83/EEC Satellite Directive	2011/77/EU Directive	Term
Fixation of unfixed performance	Art. 13 (b)	Art. 14.3.	Art. 2.	Art. 7.2-3.			
Reproduction of a fixation of performance	Art. 13 (c)	Art. 14.3.	Art. 2. (e)				
Broadcast./Comm. to the Public	Art. 13. (a), (d)	Art. 14.3.	Art. 3.2. (d)	Art. 8.3.	Art. 1(3); Art. 2; Art. 3. Art. 8.		
Righth of Distribution				Art. 9.1.			
Right of Rental				Art. 3.1.			
Limitations and Exceptions	Art. 15.		Art. 5.1.; Art. 5.2.	Art. 10.			
Term of Protection	20 years – Art. 14.	20 years – Art. 5.					50 years – (3)

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<sup>1</sup> International Convention for the Protection of Performers, Producers and Broadcasting Organizations. Rome, 1961.