

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. Video Games

If films are complicated creations, it is also true to the video games, which are rather complex pieces of works. They are protected as software, because the world, the characters, the storyline in the video game, are operating in a well-structured software, which marks the borders of the given digital, virtual environment in the technological sense.

The storyline, the characters, the music and the graphical interface are protected by copyright. Sometimes the end users are also able or permitted to modify some elements of the video game by creating new maps and missions, adding new tools and characters to the given virtual world. These user-generated contents have significant relevance regarding the intellectual property attached to them, which needs to be regulated, usually by end-user license agreements. The video game industry is just as competitive as the whole IT and software sector. The development of a game requires huge investment by the developer company that organizes the creation and dissemination of the work. Video games are in the forefront of the digital content dissemination. The very first online market places, besides the music and video streaming business models, were created related to the digital distribution of video games.

Development of video games is indeed a complex process. As it was mentioned, the world is operated by a software, a sophisticated game engine, which determines the world attributes, the motion of the characters, the physic of the world. The skeleton of the game is the graphical engine, but the world itself is very similar to motion pictures. In most of the cases there are in-game videos, which have an important role in telling the story of the game itself. These in-game videos are played by flash and blood performers, whose performance later adopted to the digital virtual environment. The world itself can be partially controlled by the

gamer. This world is graphically designed. The graphical design is also protected by copyright, so as the characters and every other creative creation that become part of the virtual world. This is another aspect which makes video games very similar to the motion pictures. The contributions to the whole game by the members of the developer team are cumulated in one single piece of work at the end of the development, which is the computer game itself, as a software. This software serves as a good example to works made for hire. At the end of the process, the developer will be the right holder of the game, and it will be the one which authorizes each and every copyright-related uses.

The way of dissemination of video games went through a revolutionary transformation. As films, video games used to reach the members of the public (end users) via the traditional distribution chain. The developer created the content, the content was copied on a physical data carrier, which then was sold in a retailer's shop. Due to the rise of digital online market places the developers can leave the physical copies and the retailers out of the business and rely on their own digital platform, such as Origin of the Electronic Arts or other, semi-independent platforms, such as Steam. These platforms developed a new way of dissemination, involving the users by allowing them to form communities around games and to contribute to the development of some particular features of the games. This is the well-known user generated content. Users are allowed to create new characters, maps, tools and everything, which is allowed and possible within the boundaries of the given software.

Tests, questions and selected case law:

Video Games as Computer Programs

1. Can a computer game be considered as a work made for hire?
2. Who owns an avatar?
3. What is a user-generated content?
4. What is the relevance of online retailers? Name at least three example!
5. Who owns the rights of a video game at the end of the development process?
6. What is the difference between motion picture and video games?
7. What rights do performers own in an in-game video?

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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