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. But 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 which 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.

Computer programs are protected as literary works within the meaning of the Berne Convention. This fact closed a long-lasting debate about the legal status of softwares. The protection is granted to computer programs in any form of their expression, whether they are in source or object code. The protection covers the preparatory design works as well. To be protected, no test should be applied regarding its quality or aesthetic nature.

The author of the computer program is the natural person or group of natural persons who has created the program, as well as the legal person who initiated the development and entitled to the use of the work within the framework of the works made for hire. In the second case, the program is created by an employee who is following the instructions of the employer. In this

case the employer shall be exclusively entitled to the use of the work and it will be also entitled to authorize any use. Working for hire might mean limitation to the creativity of the creator of the work. If the instructions of the employer reach a level, where the programmer only responsible to carry out and implement the instructions, the creativity does not reach the level which is required for the protection.

In the first, introductory chapter it was highlighted and it was also mentioned in each and every actors of the creative industry, that the limitations and exceptions constitute an important part of the intellectual property. Every protected use of works or other protected subject matters is subject to the limitations and exceptions. In case of software producers, limitations and exceptions also share the common elements, but there are significant differences, which are only applicable for softwarres. For the sake of use softwares are need to be installed on a computer. The process of installment requires the exercise of one specific economic right, the right of reproduction. After installation, during the running of the program, temporary copies are made in the Random Access Memory (RAM). Temporary or permanent copies are subjects to limitations and exceptions in case they facilitate the use of the software by the lawful user. Lawful user is also an important term. A user might be considered lawful if s/he obtained the copy of the given software within the framework of an End User License Agreement (EULA), which specifies the details of the permitted uses. If a user unlawfully obtained the copy of the software, s/he will not be entitled to carry out those acts which are permitted under the rules of limitations and exceptions.

As softwares, by becoming substantial parts, are usually made to facilitate other softwares operation. Lawful user should be entitled to observe, translate, adapt or alter the code of the software in order to make it compatible with another software. Decompilation, which means that the software code might be decrypted so that the user might be able to learn the functionality of it, is also permitted to the lawful user. As digital technology, let it be as stable as possible, always carries the danger of loss of data, lawful users are entitled to make a backup copy of the program.

Softwares are meant to be operate on a wide scale, from video games to operation systems. They might be distributed to the public as a hard copy reproduced on a physical data carrier or as a digital copy. For hard copies the right of rental and lending is secured by the European legislator in the Software Directive. The digital copies are “sold” in digital market places. Sold is a commonly used expression for that particular type of agreement in which the end-users obtain right to use the software. This agreement is not a sale, on the other hand. Softwares are licensed to the users and the EULAs expressly determine the specific uses that might be carried out by the users. Hard copies of the softwares, on the other hand, might be subject to a sale contract, but only the data carrier. It means that the end-user will own only the data carrier, but the software reproduced on the carrier will still be subject to license agreement.

Tests, questions and selected case law:

Video Games as Computer Programs

1. How does the WIPO Copyright Treaty protect computer programs?
2. Based on the Software Directive of the European Union, what is the main function of a computer program?
3. Who can be considered as author of a computer program according to the Software Directive?

4. Which are the restricted acts a user cannot do with a software?
5. Please enlist the limitations and exceptions to the economic rights granted by the Software Directive!
6. What does decompilation mean?

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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