

Chapter I/a. Actors of the Creative Industry

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. Overlap of copyright and related rights

Copyright/authors' right¹ and related rights have common roots. Both aims at protecting the interests and invests of the creators but on a different level. Creators of original works were granted with protection at first by the different national copyright and authors' right norms. Authors create the protected subject matter, which might be a literary or musical work, radio and television plays, cinematographic creations, photographic works, etc. These protected subject matters are used on a huge scale by commercial users and enterprises for profit-oriented purposes. A literary work might be exploited as a book, or might serve as a story-line for a film adaptation. A musical work might be performed by a performing artist other than the original author. The performance might be fixed on a sound recording which might be broadcasted over the air.

Investors and actors of the creative industry have been struggling for legal acknowledgement which has been already recognized by both the international and the European legislators. Several international treaties and agreements have been adopted since the second half of the XXth century. These international legal instruments aimed at harmonizing the territorially fragmented legal landscape of the performers, phonogram producers, the broadcasting organizations and database producers.

¹ The expression of copyright refers to the Anglo-Saxon approach, while the authors' right refers to the continental way of thinking about the same legal phenomenon, namely the protection of those who creates an original work.

The development of the international and European legal norms in the field of right holders related to copyright and the body of law in the field of authors' rights have been running hand in hand. Copyright/authors' right is the genuine groundwork, serves as an example for the related rights regarding the structure of the economic rights. On the other hand, there are significant differences that highlight the hierarchical relationship between the authors' right and related rights. For example, the moral rights and the term of the protection are slightly different and the exceptions and limitations also conform to the limitations and exceptions of the authors' rights. Related rights should be understood as it does not influence the protection of copyright in literary, scientific and artistic works.²

Overlap might be detected not only in the common interest of copyright holders and related right holders, but from time to time it could be challenging to determine whether the level of creativity in case of a performance reaches a certain level, where the creative input should be recognized in the field of copyright law. The advent of Artificial Intelligence and more and more nuanced digital technologies also shade the border between the achievement of a natural person actor (performer) and the game itself.

There are some rather sophisticated creations with a need for tremendous amount of investment, such as software motion picture and database. Among these there are subject matters protected by copyright (software and motion picture) and by related right (database). Another attribute of the software and motion picture is the complicated way of development. Both a video game and a film contain several elements which might be protected by copyright per se.

2. Rights related to copyright

The aim of this course is to introduce actors of the creative sector staying on the other side of the same coin. As it was above stated, the author is the person who creates the original work, which can be a literary work, a scientific work, a musical work, or even a software. In most of the cases they require an intermediary who helps them to disseminate or interpret the work to the public. As copyright law developed, the first intermediary or interpreter recognized as related right holder was the *performer*. It is interesting to see that the right of performance per se is also a recognized economic right of the author, but it does not mean that someone else, other than the author could not be able to interpret the work to the public.

So the related rights are internationally recognized rights, that grant protection to those achievements who contribute to the author's works by interpreting (performers), or otherwise disseminating it to the public. This course will touch upon those specific group of copyright holders and related right holders who play an active role in the entertainment industry. Entertainment industry is one of the most important segment of modern economies. The concerned right holders will be as follows:

1. Performers
2. Phonogram Producers
3. Broadcasting Organizations
4. Film Producers
5. Database Producers
6. Video Game Producers

² Act LXXVI of 1999 on Copyright. Section 83 (1).

In the entertainment industry there are overlapping areas that has an important effect on one or more authors' rights or related rights. Right of publicity has high relevance regarding the performers or in the video game industry. Also the performers that particular group of actors that is deeply affected by such modern digital technologies as motion capture and AI motion capture, because these technologies can substitute the actors in video games or in motion pictures. Right of publicity is also an overlapping area which can be mentioned at the performers or at the video game industry. In this course we will treat it as a separate segment. Folklore will also be an important part of the course, which is going to be mentioned at chapter of performers.

Tests, questions and selected case law:

Authors and Performers

1. What is the purpose of the term of protection?
2. How long does it last in case of authors and performers?
3. Is folklore protected? Explain your answer briefly!
4. Name at least three economic rights!
5. Name at least three moral rights of authors!
6. What was the first international treaty with the purpose of harmonizing the protection of performers?
7. What does InfoSoc Directive holds about the economic rights of performers?

Selected case law:

Holland v. Vivian Van Dam 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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