

## **Chapter I/b.**

### **Introduction – Law on the Actors of Creative Industry – Comparative Perspective**

**Dr. István Harkai**

**Institute of Comparative Law and Legal Theory**

**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. Law on the Actors of the Creative Industry**

As it was stated in the previous chapter, the actors of the creative industries can be divided up to the authors and other related right holders, such as performers. Before diving in the detailed analysis of the specific actors, basic copyright rules are worth to be mentioned. At first, a work can only be protected as an author's work, if it is original. Other criteria are not required for the protection. It means that even if the work does not fit the taste of the audience, if that is original, protection is granted. The work is highly relevant in the field of entertainment industry, because the actors rely on authors' work, that serve as a basis for their activity. Every achievement, let it be performance, phonogram or television program, necessitates a work.

Another similar element between works and other protected subject matters (achievements) is that the international, regional and national legislators recognize some level of creative input that is made by the related right holder when s/he interpreted the work. If the level of creativity reaches a certain threshold it might constitute copyright protection. There are works which are excluded from copyright protection. In this field, folklore is more than interesting. The expressions of a given traditional community are an inexhaustible pool of ideas, which can be taken by authors and related right holders to. This segment is going to be discussed in details in the chapter dealing with performing artists.

Economic rights are common feature of copyright and related rights. Copyright served as an example for the international legislator when the international related rights norms were adopted. As the use of author's work by related right holders highly rely on existing economic

rights of authors, the secondary users have to ask for permission if they want to exploit an author's work. By granting protection to the related right holders, the layer of the protection of economic interests of the actors of the creative industry was doubled. Right of reproduction, right of communication to the public (broadly defined), right of performance, right of distribution, just to mention the most typical examples are granted to both the authors and the related right holders regarding their achievements. Although similarities are significant, there are some differences as well. For example, the right of fixation is not present in case of authors' work, but it is an important economic right related to performances which have not been fixed yet.

Moral rights are also granted to the authors. These rights are meant to express the relationship between the author and his/her work. By granting the right of making the work public, the right to indicate the name on the work, the protection of integrity refers to a strong and recognized connection between the protected subject matter. This might also be true in case of related rights. When the achievement is individual enough and can carry a high level of creativity, it also entitles the right holder to identify the achievement as his/her own.

Neither copyright, nor related rights mean an unconditional, unlimited monopoly over the work or other protected subject matter. Every copyright regime, not only the Common Law, but the continental as well, established a balance between the interest of right holders and the interest of the public, which is willing and wishing to buy, to rely on, to get to know, to purchase copyright protected goods. The balance is maintained by the well-known limitations and exceptions, which grants free use of the work when some certain requirements are also fulfilled. For example, for private use copy can be made. If the copy is made with the help of a printing machine, a special type of royalty has to be played. This sophisticated balance will be mentioned in each chapters which are dealing with the particular related rights.

Limited nature can be detected not only in the system of limitations and exceptions, but in the term of protection as well. Term of protection is again a field of similarities. Copyright is protected during the life of the author and 70 years after his/her death. The term of protection had been grown during the XX<sup>th</sup> century, until it has reached its final length. By taking the example from the authors' rights legislation, the international treaties and the norms of the European Union defined the term of protection for other protected subject matters as different and mainly shorter term than it is defined in the field of authors' rights. (The exact length will be mentioned in the relevant chapters.)

As it has been indicated already, copyright and related rights are sort of the two sides of the same coin. The legislator has recognized this strong relationship by expressing that the related rights cannot influence the protection of authors' rights. By stating that, the legislator acknowledged the specific, hierarchical relationship between works and other protected subject matters. To put it simply, there is no related right without copyright, which means that an achievement, which relies on an author's work can only be protected if it falls under the scope of one particular related right. This requirement can only be fulfilled if the related right holder's creative input helps to interpret, helps to disseminate authors' work.

## **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 is the rationale behind the term of protection?
7. What is the rationale behind the limitations and exceptions?

**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.

*This teaching material has been made at the University of Szeged, and supported by the European Union by the project nr. EFOP-3.6.2-16-2017-00007, titled Aspects on the development of intelligent, sustainable and inclusive society: social, technological, innovation networks in employment and digital economy. The project has been supported by the European Union, co-financed by the European Social Fund and the budget of Hungary.*

