

# **Introduction to the Comparative Entertainment Law**

**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. Phonogram producers**

At the end of the XIX<sup>th</sup> century technological development resulted in, among other extremely important inventions, the invention of phonograms. Phonogram is the fixation of the sound or sounds, melody and lyrics of a performance, which is then reproduced and disseminated to the public. Producing a phonogram of a performance requires vast amount of investment by a natural or legal person, which is also responsible for the proper marketing, advertisement and dissemination of the phonogram. The international and European legislators dedicated several treaties and directives to the protection of investors whose investments are inevitable for the music industry. Especially, considering the fact that the music industry is in the forefront of the technological change. Every new device, from the cassette recorder to the compact disc and peer-to-peer file sharing, severely affected their business model, which also went through a significant transformation. Phonograms used to reach the public in a physical format, but digital technology made it possible to leave the retailer out of consideration, and even the role of the phonogram producers and record labels was questioned. Due to the advent of streaming technologies, new internet based market places have evolved and become inevitable parts of the music industry.

Phonograms played an important role in the way we consume music. To put it simply; phonogram was a revolutionary invention because it made possible to “take away” music. Prior to the phonogram, public could only enjoy musical works, if the members of the public visited the concert hall, or other place where the performer interpreted the music. After technology allowed the musician to record his/her work, dissemination of music gained a second way to reach the public. Prior to the phonogram, the only way to disseminate musical

work, other than publicly perform it, was to print it on music sheets. But music sheets were not particularly enjoyable.

As it was mentioned above, the phonogram producer is basically an entrepreneur, who first fixes the sounds of a performance or other sounds. Due to the fact that the phonogram producer invests a vast amount of money into establishing the proper technological background, his/her investment is worth to be protected so the international legislator has recognized them as related right holders by granting them specific economic and moral rights. Economic rights cover all the relevant acts which can be taken into consideration during the production of phonograms. Fixation and reproduction is inevitable to make the sounds perceptible to the distant public. The right of distribution and communication to the public covers the acts of dissemination.

The role of the performers and phonogram producers in the music industry is rather important. Without them the music would have not been able to step out from the small world of theaters. Composing a music is one thing, but performing it is an essential element in the process of making the work perceptible. To reach a wider market, which is the technically uncountable public, phonogram is also essential. This fact was recognized by the international legislator by granting protection to the phonogram producers. During the XX<sup>th</sup> century several attempt was made to protect the rights and interests of the phonogram producers, as phonograms have always been in the forefront of the technological change, as it has already been stated above.

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

### **Phonogram Producers**

1. Please define the term "Phonogram"!
2. Why is phonogram producer protected?
3. Which economic rights are granted to the phonogram producers by the WIPO Performance and Phonogram Treaties?
4. What are the main characteristics of online music publishing?
5. Name the stakeholders of the music industry!
6. Describe in short the difference between brick and mortar stores and online music platforms!
7. What is the difference between record labels and phonogram producers?

### **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 Phonogram Producers in the International and European Copyright Regime:

	Rome Convention <sup>1</sup>	TRIPS Agreement	WPPT	2001/29/EC InfoSoc Directive	2006/115/EC Rental Directive	98/83/EEC Satellite Directive	2011/77/EU Term Directive
Fixation of unfixed performance	Art. 3 (b)			Art. 2.	Art. 7.1.		
Reproduction of a fixation of performance	Art. 3 (e); Art.	Art. 14.2.	Art. 11.	Art. 2.			
Broadcast./Comm. to the Public	Art. 3 (f)-(g)		Art. 14.	Art. 3.	Art. 8.1.	Art. 4.1.	
Righth of Distribution			Art. 12.		Art. 9.1.		
Right of Rental		Art. 14.4.	Art. 13.		Art. 3.1.		
Limitations and Exceptions	Art. 15.		Art. 16.	Art. 5.1.; Art. 5.2.			
Term of Protection	20 years – Art. 14.	50 years – Art. 5.	50 years – Art. 17				50 years – (3)

*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.*



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