

# **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. Radio and Television Organizations; Broadcasting Organizations**

It cannot be too often asserted that technological development has deep impact on copyright. Works and other protected subject matters used to be disseminated to the public present at the place and time of the use, which was typically performance. Theaters on the other hand had limited capacity. The invention of radio and then television broadcast technologies made it possible to reach a more wider public other than that being present at the place and time of the performance by broadcasting the works and other protected subject matters to such geographical locations which could be miles away from the actual use of the given work.

These uses are commonly referred to as *communication to the public*, but it must be highlighted that the term of communication to the public was rather fragmented until the new Millennium, when the Internet appeared among the devices used for dissemination. Similar, but in technological details slightly different technologies resulted in the fragmentation of the communication-related uses. Broadcasted programs could be transmitted by wire or broadcasted by satellite to the public. These types of uses make possible only a one-way communication between the actual place of the use and the place where the member of the public is located. Internet makes possible a two-way communication. Not only the commercial user can reach the public, but the members of the public can decide when and where they want to access the given content. These on-demand uses necessitated a new, broadly defined concept of communication to the public covering every communication related uses from broadcast to interactive, on-demand uses.

Communication-related uses cover wide scale of business models. The radio was the first invention which allowed the right holders to reach the distant public, which is not present at the place of the use. The actual use in case of communication related uses is the *act* which is

initiated by either a radio organization or a television organization. The Internet-based uses also follow similar approach. In that case the act is carried out when the work is *made available to the public*. Two elements are inevitable and essential. The act and the public. The act, again is the actual use, when the work or other protected subject matter is entered into the uninterrupted chain of transmission, which can take place via broadcast, satellite or wire. The public is the actual market of the right holders' works and other protected subject matters. Members of the public are willing to subscribe for the programs and channels of television and radio organizations.

Regarding the Internet-based uses, the public fulfil the same function, but the act has different aspects. While in case of "traditional" cases of the communication to the public, making available does not necessitate the actual transmission, rather refers to a phase, in which the work is ready to be transmitted. The actual transmission depends on the will of the user, the member of the public, who initiates the actual transmission by downloading the content from the internet. It is a very important distinction.

In this chapter we are only dealing with the so-called traditional communication-related disseminations, which are carried out by radio and television organizations. These two types of media still obtain significant market share in the entertainment industry and play an active role in the mass media communication. They also play an active role in the dissemination of copyright protected works and other subject matters. Therefore it was important to grant protection for them regarding their programs. As the main act, that aims on the exploitation of copyright protected works and other subject matters, is the communication to the public, international treaties and European directives aimed at harmonizing the rights of communication to the public. Not only the right of communication to the public is granted, but the right of fixation of an unfixed program and the right of reproduction of a fixed program is also recognized, as well as the right of distribution. For further details please study the table below.

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

#### **Radio and Television Broadcasting Organizations**

1. Which international treaties are relevant in case of broadcasting organizations?
2. What is the difference between broadcasting and communication to the public by other means?
3. What are the minimum economic rights of broadcasting organizations in the Rome Convention?
4. How long is the term of protection under the TRIPS Agreement?
5. What is the definition of satellite in the European copyright regime and which Directive regulates it?
6. Is a television program itself protected?
7. What role does the territoriality of the related rights play in case of such broadcasts which take place in more than two countries?

#### **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.

### Economic Rights of Radio and Television Broadcasting Organisations in the International and European Copyright Regime:

	Rome Convention <sup>1</sup>	TRIPS Agreement	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. 13 (b)	Art. 14.3.	Art. 2.	Art. 7.2-3.		
Reproduction of a fixation of performance	Art. 13 (c)	Art. 14.3.	Art. 2. (e)			
Broadcast./Comm. to the Public	Art. 13. (a), (d)	Art. 14.3.	Art. 3.2. (d)	Art. 8.3.	Art. 1(3); Art. 2; Art. 3. Art. 8.	
Righth of Distribution				Art. 9.1.		
Right of Rental				Art. 3.1.		
Limitations and Exceptions	Art. 15.		Art. 5.1.; Art. 5.2.	Art. 10.		
Term of Protection	20 years – Art. 14.	20 years – Art. 5.				50 years – (3)

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