

Max Planck Institute  
for Innovation and Competition

Copyright and Related Rights: Beijing and Marrakesh Treaties

Comparative analysis of national solutions  
in protecting audiovisual performers' rights  
– Germany and France

WIPO in cooperation with the Copyright Directorate of the  
Ministry of Culture of Albania

Tirana, March 6, 2018

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# Background for Protection in Germany and France

- **Both follow EU law (and for performers in general, RC, WPPT)**
- **Partial harmonization of performers' rights in Directives**
- **Basic principle: equal treatment for audiovisual performers and other performers (few exceptions)**



# Protection in Germany

- **Basic rule: equal treatment for audiovisual performers and other performers**
- Examples for audiovisual performers: actors, singers, musicians, dancers – every performance which can be fixed on an audiovisual fixation

- **Subject matter of protection: Performances by „performing artists“**

## **Article 73 (UrhG) Performing artists**

*For the purposes of this Law, performing artist means a person who recites or performs, sings, plays or otherwise performs a work or expression of folklore or participates artistically in such a performance*

- Performance must relate to a work (or expression of folklore) – even if it is no longer protected
- Artistic interpretation of work required



# Protection in Germany

- **Right owners:**
  - Performers according to Article 73 UrhG (such as actors, singers, musicians, dancers, conductors etc.)
  - Technical/ supplementary/ organizational contribution to performance not sufficient; extras are not protected
- **Contents of protection:**
  - Moral rights (Article 74, 75):**
    - Right of recognition as performing artist, right to have his/her name mentioned (special provision for groups of artists)
    - Right to object to distortion/ mutilation of performance
    - **BUT:** Restricted for AV performers (Article 93)



# Protection in Germany

- **Economic rights:**
  - Right of fixation on (audio or) AV recording medium
  - rights of reproduction, distribution, rental of recording
  - Public lending right (remuneration right)
  - Rights to make performance available to public (internet), broadcast it live, communicate it by screen and loudspeaker to the public
  - in case of use of (phonogram or) AV recording for lawful broadcast/communication, and for showing/playing such broadcast/communication to the public : right to an equitable remuneration
- **Limitations :**
  - Reference to limitations in field of authors' rights (e.g., for education and research – acces to information - reviews - quotation - private and personal uses)



# Protection in Germany

- **Duration of protection**
  - Basically: 50 years after publication of recording of performance or after first lawful communication to the public (if earlier);
  - Due to EU Directive: audio performers have longer protection (70 years)
- **Legal presumption of transfer of economic rights (rebuttable)**
  - If a performing artist concludes a contract to participate in the production of a film with a film producer, the film producer obtains by law, in case of doubt, most exclusive rights of performer to use the performance for film exploitation



# Protection in France

- **General rule also here: equal treatment for audiovisual performers and other performers**
- **Subject matter:**
  - Article L212-1 IPC: Save for ancillary performers, considered such by professional practice, performers shall be those persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works, variety, circus or puppet acts.
  - Wide interpretation, list not exhaustive
  - *Personal performance* is central condition
  - Extra performers can be excluded from protection (depending on the importance for the performance)



# Protection in France

- **Right owners:**
  - Performers according to Article L212-1 (cited above), which interpret a preexisting work
  - Personal performance necessary
- **Contents of protection:**
  - Moral rights:**
    - Right of paternity, right of integrity; (no right of withdrawal or divulgation as for authors)
  - Economic rights:**
    - Exclusive rights: fixation, reproduction (arguably including distribution/rental, based on case law) and communication to the public including broadcasting , making available, etc., and separate use of images and sounds of the performance
    - Different remuneration rights (priv. copy)/royalties (also for extras)





# Protection in France

- **Limitations and exceptions (Article L.211-3 IPC):**
- List of individual cases, in particular:
  - Performance and reproduction in private space
  - Use for press reviews; parody or caricature
  - Creating an analysis/ short quotation for purposes as criticism, polemics, education, research, information etc.
- **Duration of protection**
  - Moral rights: seemingly perpetual (not specifically defined)
  - Economic rights: expire 50 years after publication/communication to the public/ performance



# Protection in France

- **Legal presumption of authorization to use**
  - Legal presumption of authorization of certain uses triggered by the signature of contract with film producer
  - Presumption irrebuttable, but affects solely audiovisual exploitation of the work
  - Such contract shall fix a separate remuneration for each of the different modes of exploitation



*Thank you for your attention!*

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