



## INTERPRETERS OR PERFORMERS AS RELATED RIGHTS HOLDERS

### *INTERPREȚI SAU INSTRUMENTIȘTI CA DEȚINĂTORI AI ACELORAȘI DREPTURI*

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According to article 95 stipulation, law 8/1996, regarding the author's right and the related rights, and regarding its further changes and adding, all actors, singers, musicians, dancers, and other persons who sing, dance, recite, declaim, act, perform, stage<sup>1</sup>, conduct or perform any literary or artistic production, any show, including a folkloric show, a variety show, a circus show or a puppet show, are interpreters and performers.

Regarding the show extra part players, the most frequent question is: if those belong to the category of author's right and related rights holders.

The text of *law* and the provisions of article 95 include a limitative enumeration, but according to the text of Convention of Rome (art. 3), as well as in conformity with the solutions adopted by other countries<sup>2</sup> - the extra part players, performing either in theatres or in moving pictures are not holders of author's rights and of related rights, the difference between an extra part player and an

interpreter or a performer is determined by the usual practice of this job.

In addition, it is important to emphasize that the appreciation of an author's rights holder and a related rights holder, must be made according to the usual practices of a job and according to the type of show that uses extra part players. Starting with the definition of the execution or performance of a collective play, which is collective when the individual performances or executions are a whole, and due to the nature of performance or execution, it is impossible to give a distinct right to every artist who act in the totality of performance or execution, thus we must distinguish them according to the type of show.<sup>3</sup>

Thus, the extra part players from an opera show may be related rights holders only if their participation in the show is mandatory and their performance is necessary for the accomplishment and transmission of the general message of show, otherwise they are not related rights holders.

In the case of a collective character formed of two or more holders, a character who is fundamental to the show and who overpasses, with his

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<sup>1</sup> The director or producer of an audio-visual work is considered the main author of audio-visual work, while the stage manager is holder of connection rights, belonging to the interpreters or performers category.

<sup>2</sup> See art. 212-1

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<sup>3</sup> Ligia Dănilă, *Dreptul de autor și dreptul de proprietate industrială*, Editura C.H.Beck, București, 2008, p.33.

role on stage, the primary finality of an extra part player, we can say that this collective character belongs to the category of holders of related author rights. Moreover, if the show lacks a collective character formed of extra part players, it turns into a simple aria show, and, in this case, we can appreciate that the extra part players are related rights holders, and thus they can be assimilated with the “performer artists”. In this case, we must extend the meaning of “performer artist” and we must appreciate that the author did not refer only to the artist performing certain literary, artistic works, but he also referred to the real performers of some precise directions transmitted by directors, another category of protected artists.

The interpreters and the performers enjoy moral and patrimonial rights.

**The interpreters’ and performers’ rights** are the rights related to author’s rights, which having an independent existence, are protected by author’s rights law, without bringing it any prejudice.

There are recognized and protected as holders of rights in related to author’s rights the interpreters or performers for their own performance or executions, the producers of sonorous recordings for their own recordings and the radio-fusion and television structures for their own programs and programming services.

The provisions common to authors, interpreters or performers, and the producers of sonorous and audio-video recordings, are stipulated in the text of actual law.

The rights in related to author’s rights are not prejudicial to author’s rights. No provision of law, strictly related to related rights, must be

interpreted as a limitation of exercising the author’s rights. This principle has an imperative character and it cannot be disregarded.<sup>4</sup>

### *Interpreters and performers’ moral rights*

Interpreters or performers have the following moral rights:

- a) the right to claim the paternity recognition of their own interpretation or execution;
- b) the right to claim that his name or nickname should be indicated or communicated in all shows or in all of its recordings;
- c) the right to claim the respecting of the quality of his performance and the right to object against any depreciation, falsification, substantial modification of his interpretation or execution, or against any breaking of his rights, which would be seriously prejudicial to his honour or his reputation.

Except the recognized moral rights, the interpreters or the performers, they lack the right of divulgence of work and the right of retraction.

As regards the divulgence right, its exclusion from the moral rights of interpreters and performers is related to the nature of interpretation or performance action, which are each of them a divulging action. In other words, interpretation or execution means divulging.

As regards the retraction right, its exclusion is a result of the impossibility of creation of such an act, because an act of interpretation or execution once made, it cannot be retracted.

Moral related rights cannot imply any renunciation or transfer. After the

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<sup>4</sup> Ligia Dănilă, *Dreptul de autor și dreptul de proprietate industrială*, Editura C.H.Beck, București, 2008. p.98

death of an interpreter or performer, according to article 97, line (2) of the law, these rights are passed over by inheritance according to civil legislation, on unlimited time. If there are no heirs, the exercise of these rights belongs to the collective administration structure, which administered the rights of the interpreter or performer, or, by case, belongs to the structure with the biggest number of members within the respective field.

### *Interpreters or performers' patrimonial rights*

The interpreter or performer has the exclusive patrimonial right to authorize or to prohibit the following:

- a) fix his interpretation or performance;
- b) reproduce the fixed interpretation or performance;
- c) distribute the fixed interpretation or performance;
- d) rent the fixed interpretation or performance;
- e) borrow the fixed interpretation or performance;
- f) import in order to sell his fixed interpretation or performance on the internal market;
- g) radiobroadcast and public communication of his interpretation or performance, except the case when his interpretation or performance has already been fixed; in this case they can only receive equitable remuneration;<sup>5</sup>
- h) public presentation of his fixed interpretation or performance in order that it can be individually accessed in any chosen place and at any moment by audience;

- i) cable re-broadcasting of his fixed interpretation or performance.

In the respect of the present law, **fixing** means the incorporation of sounds, images or of sounds and images, or of their digital representation on a medium that permit the perceiving, reproduction or their public communication with the help of a device.

Regarding the works interpreted or performed collectively, the interpreter or performer artists must name a representative who can authorize the using of labour conscriptions in each of the modalities mentioned above. The representative is denominated in written form, with the accord of the majority of group members. The directors, conductors and soloists who can personally authorize are the exceptions from this modality of representation.

If the labour conscription of the interpreter or performer is part of an individual labour contract, the patrimonial rights can be passed over to his employer. However, the cession must be clearly provided in the individual labour contract and must include the time for which rights were ceded; otherwise, the time is 3 years.

In addition, if the interpreter or performer was implied in the accomplishment of an audio-video work or of an audio-video or sonorous recording, the assumption is that, in lack of other opposite convention, he should cede its producer, in exchange of an equitable remuneration, the exclusive right to exploit his labour conscription by reproduction, distribution, importing, renting and borrowing.

Once an agreement of cession of patrimonial rights is concluded, this must mandatory include the adequate remuneration for the interpreter or performer artist, remuneration calcu-

<sup>5</sup> The equitable remuneration stipulated at letter g) is settled and collected according to the procedure stipulated at article 131/132 and 133 of law 8/1996.

lated proportionally with the takings, in a fix sum or in any other way. If the remuneration was not settled in an agreement, the interpreter or performer can claim its legal settling. The clear disproportion between the assignor's remuneration and the benefits received by the cessionary, give the assignor the right to claim the revising of the agreement, or a satisfactory increasing of remuneration.

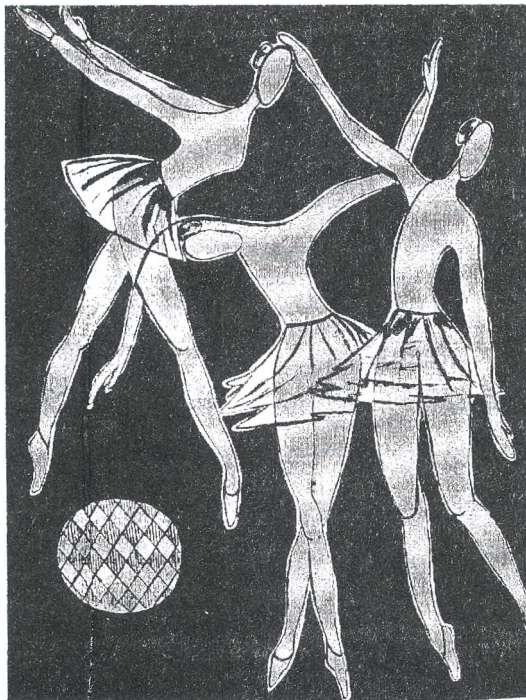
According to article 102, line (1) of the *law*, the patrimonial rights of the interpreter or performer artists

last 50 years from the moment of interpretation or performance. However, if the fixing of interpretation or performance, within this period, creates a licit publication or a public licit communication, the rights last 50 years from the moment of apparition of any of the two.

The duration stipulated in article 102, line (1) of the *law*, is calculated beginning with 1 January of the year that follows the fact generating of rights.

### Referințe bibliografice

1. Ligia Dănilă. *Dreptul de autor și dreptul de proprietate industrială*, Editura C.H.Beck, București, 2008, 100 p.



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