

Resume

I have chosen The Rights of Phonogram and Audiovisual Fixation Producers as a subject of my rigorous thesis. I have chosen this theme due to my positive relationship to the music, copyrights and my interest in intellectual property rights in general.

The opening chapters of my thesis contain short copyright terminology. Here, I clarify such terms as intellectual property, its nature and characteristic features, as well as the concept of the copyright law as an independent branch of the private law. Also the concept of our continental private law, so called quasi-dualistic concept inspired by the French dualistic concept in combination with elements of the monistic concept is interesting. The key question is the specification of the author's craft (work), which is a fundamental concept in the area of the copyright law.

The next chapter contains the comparison of the current version of the Copyright Act embedded in the Act no. 121/2000 Coll. and the previous act from 1965, whereas I point to starting points of both regulations and principal differences between them. Furthermore, I discuss the classification of the current act, its formal arrangement, consequences of the Czech Republic joining EU and the act amendments.

The chapter four deals with relevant regulations of the *acquis communautaire*, the implementation of which has had an impact on the Czech regulation. It is namely case of directives 2006/115/EC, 93/83/EEC, 2006/116/EC, 2001/84/EC or 2004/48/EC.

Next chapter deals with the intellectual rights globally. I describe some worldwide phenomena in the area of the copyright law, the activity of the World Intellectual Property Organization (WIPO), key international legal documents such as Berne Convention, Rome Convention, Geneva Convention, TRIPS agreement and WCT and WPPT agreements.

The chapter six deals with the merit of the work; the introduction contains the explanation of the basic terminology of rights of producers of a phonogram to his phonogram, i.e. namely the term of the phonogram, producer of a phonogram, usage of the work (craft) generally and basic points of the regulations from the point of view of WPPT. Its quite extensive subchapter deals with the special licence

agreement regulation under the Copyright Act in force. This contract provides for the authorization for the use of the phonogram to persons different from the producer constitutively, whereas this is a special type different from the license agreement under the Commercial Act.

Furthermore, there is the list of ways of phonogram use under § 76, section 2 of the Copyright act – the right to reproduce the phonogram, distribute the original or copies of the phonogram, rent and lend original or copies of the phonogram, broadcast and otherwise communicate of the phonogram to the public, retransmission of the radio and TV broadcasting and Performing of radio and TV broadcasting.

Current trends of the regulation of the duration of a phonogram producer's right are outlined in the subchapter 6.6.10, where I also mention the ongoing discussion on the draft amendment of directive no. 2006/116/EC on harmonization of the period of copyright and certain related rights protection. The development of this amendment in the EU institutions is difficult and hard to estimate. Other changes can only be expected in the spring 2010, when the Council is about to convene, this time under the supervision of Spanish presidency.

Analogically, the chapter deals with rights of producers of an audiovisual fixation to his fixation. In the introduction I analyze the starting points of the regulation, which has not been regulated in terms of the international law. In the Copyright Act it has a brand new definition, in compliance with the directive 92/100/EEC, or 2006/115/EC. Furthermore, I define the term of a audiovisual fixation and its producer. I also describe possible methods of using the audiovisual fixation.

In chapter VIII I enumerate provisions of the chapter I, which will be appropriately applied to rights of producers of a phonogram and audiovisual fixation used under reference standards (§ 78 and 82 Copyright Act).

The last chapter contains the theme of collective rights management, the role of the collecting societies in the information society, their history and bases. I have divided it into 10 subchapters going from general definitions to the specified activities. How the collective rights manager come into the existence (procedure of the granting of authorization to execute collective rights management by the Ministry of Culture), their activities in the range of compulsory collective rights management due to Copyright Act., voluntary collective rights management based on an agreement (contracts) between collective rights manager and the rightholders. The

goal of the next subchapter is the definition of protected items by collective rights managers, subjects of collective rights management such as the users of protected items, the represented rightholders and the collective rights managers.

The next part of my rigorous thesis refers to the collective and cumulative agreements between the collective rights managers and the users of protected items, which grant them the authorization to exercise the right to use the protected items defined individually or cumulatively (incl. all items of protection). I mentioned advantages and disadvantages of these contracts.

The subchapter 9.7 is considering the activity of the collective rights managers called extended collective management. The essence is that the collective rights manager grants the license not only to apply to the relevant protected items, but also to all others, who thus consider themselves represented on the basis of the law.

The next subchapter deals with the rules for distribution of collected remuneration by collective rights managers between represented rightholders. I define two basic models called direct (address) and non-direct (non-address) distribution system. I mention their ideal basis, advantages, disadvantages and usage in today's collective management tradition.

Current trends and challenges are outlined in the subchapter 9.9. This part contains the idea of DRM according to the technological development, how the collective rights managers should react on this situation.

The last chapter 9.10 refers to the activity of INTERGRAM, which is an independent association of performers and producers of the phonograms and audiovisual fixations. At the beginning I deal with the formal structure, foundation on the basis of Copyright Act., the areas of compulsory rights management (such as TV and radio broadcast), the area of public performances, usage of phonograms produced by producers by making them available to the public. Also the compiling agenda of blank carriers (CDs, DVDs etc.) and reproduction devices is important.

At the very last pages of this rigorous thesis I demonstratively mention some facts about INTERGRAM 2008 activity, such as table of the collection of remuneration since 1995 till 2008 or the results of total INTERGRAM collection for 2008.