

# ENGLISH SUMMARY

## Art Performance and Its Copyright Protection

The main goal of my thesis is to describe and explain the fundamental principles on which is based the copyright protection of art performance. My paper is divided into three parts, namely, The Sources of law, Art performance, and The Performer's rights to his art performance.

### 1. Sources of Law

The basic legislation is the Constitution of the Czech Republic, which considers the rights to the results of intellectual creative activity as fundamental human rights. International treaties, binding on the Czech Republic, are also very important. The performer's rights are regulated especially by The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961). The Czech Republic, as any other member of the European Union, has to comply with European legislation, especially European directives. This condition is met by the Copyright Act – No. 121/2000 Sb. (Collection of Laws), as amended, which regulates the copyright and related rights. The performer's right is very close to copyright, that is why many provisions concerning the work and copyright is applied – *mutatis mutandis* – to the performer and his performance.

### 2. Art Performance

The art performance comes into existence upon performing the work of art. Works of art include copyright literary, music, dramatic, choreographic and pantomime works. The person, who performs the work of art and creates the artistic performance, is the performer, e.g. actor, musician, dancer, conductor, director. All these performers have some special art capability and creative potential necessary to give life to art works. Therefore their performances are distinguished, unique and unrepeatable and the performers have a justifiable interest in the legal protection of their individual interpretation. In addition, circus, variety performances and expressions of folklore are also protected.

### **3. Performer`s Rights to His Art Performance**

Performer`s rights are the type of intellectual property rights stipulated in The Convention Establishing the World Intellectual Property Organization. Performer`s rights are divided into two groups: moral rights and exclusive economic rights.

Performer`s moral rights include the right to make decisions on making public his artistic performance, the right to make decisions on presentation of his name (the right to decide whether and how the name of the soloist, conductor, choirmaster or the theatre director is to be presented when their performances are made public and further exploited), the right of integrity of performance (this right prevents modifications to performances which present the performers in an unfavorable light), the right of the attribution of performership. These rights could not be transferred and they last until the death of the performer.

The right to use the performance and the right to grant the authorisation to exercise this right to another person by contract are the most important property rights. The right to use an artistic performance contains the right to broadcast and otherwise communicate the live performance to the public, the right to make a recording of the live performance, the right to reproduce the recorded performance, the right to distribute the reproduction of the recorded performance, the right to rent copies of the recorded performance, the right to lend copies of the recorded performance, the right to communicate the recorded performance to the public. Performers are provided with the rights to prevent recording, broadcasting and communication to the public of their live performance without their consent, and the right to prevent reproduction of recordings of their performances under certain circumstances. Performers` reproduction and communication rights cannot be bought, sold or transferred. The term of protection of property rights is 50 years from the creation of the performance. However, where a recording of such a performance is made public during this period, the rights of the performer shall not expire until 50 years from the time when such a recording was made public.

Performer`s rights shall be restricted only in special cases specified in the Copyright Act and these restrictions shall not conflict with the normal exploitation of the performance and shall not unreasonably prejudice the legitimate interests of the performer. The performance can be used without a performer`s consent only in the cases of free uses and statutory licences, such as the following: quotations, official and reporting licences, library licence, licence for disabled, licence for temporary reproductions, licence for social facilities, use of performance

as a part of civil and religious ceremonies or as a part of official events organised by public authorities or during school performances, use of school performance or incidental use of performance.

The performer could grant authorisation to another person to exercise the right to use the performance (a licence) in specific ways or in all ways of use to limited or unlimited extent through a licence agreement. The person who gets the licence (licensee) ought to remunerate the performer. If the licence is granted as an exclusive licence, the agreement must be in writing.

The performer's economic rights to a performance created in the course of his employment shall be exercised by the employer – unless agreed otherwise.

The performer is protected against the infringement or threat of infringement of his rights primarily by the Copyright Act. He can claim the following: the recognition of his performership, the prohibition of the interference with his right, the disclosure of details concerning the way and extent of unauthorised use, remedying the consequences of the infringement of his right and adequate satisfaction such as apology or pecuniary satisfaction. Moreover, his claims for damages and unjust enrichment remain unaffected.

Some of the performer's economic rights could be subject of collective rights management. The purpose of collective management of rights is to ensure collective exercise and collective protection of performer's economic rights and to make the performances available to the public. The collective management of performer's rights is exercised by INTERGRAM (Independent association of executive artists and producers of sound-tracks and videos). The rights which are subject of compulsory collective rights management are the right to remuneration for the use of a performance recorded on phonogram published for commercial purposes by broadcasting, the right to remuneration for the making of a reproduction for personal use, the right to remuneration for the rental of the copy of the recorded performance and the right to use the performance by cable retransmission. Fees are collected by the collective manager – INTERGRAM and distributed among the performers according to its accounting rules.