

Invited speaker: Herman Croux, attorney at law, specialised in IPR in the field of the creative industries

Herman Croux gave an introduction on the international and European copyright environment, pointing out relevant international agreements such as the Bern Convention and legislation such as the European Information Society Directive (2001/29/EC) as well as the Term of Protection Directive (2006/116/EC) and the Directive on Collective Rights Management and Music Online (2014/26/EU).

The most important Directive in the field according to HC is the InfoSoc Directive which had the aim to prepare Europe for new technologies. Its broad scope covers around half of all copyright topics.

HC also addressed the role of the European Court of Justice which in recent years has been taking over legislation in copyright law and plays an “activist” role on the European scene.

Issues dealt with:

- Concept of originality
- Communication to the public
- Reproduction right

At the end of the introduction, HC shortly presented different concepts of copyright in the Member States and general differences between copyrights and neighbouring rights.

In order to facilitate the discussion, HC distributed several examples to the workshop participants how much copyrights/neighbouring rights several companies had to pay (percentages and total amount in € for different rights).

TIPS for touring companies and their dealing with copyrights

- Look from the beginning at the territory (where do you plan to go?)
- Get already a license for the touring period at the beginning of the production
- Have a strategy at the beginning
- Be reasonable about what you ask (i.e. not worldwide rights when you only tour to a few countries)
- Adaptation rights: what is your strategy? What do you communicate to collecting societies? Think ahead that changes often need to be agreed upon

Question from a Pearle* member on personality rights

In case that copyrights expire, there are still personality rights to be taken into account; heirs of a composer i.e. can try to claim them or will try to claim them when they do not agree with a performance. What can one do about it?

- Personality rights are only relevant for the private life of the composer; they shouldn't be used to stop performances. It has to be explained why certain parts would have an impact for personality rights.

General TIPS how to deal with authors and authors' rights when touring

- It always makes sense to go directly to see authors/composers of high profile as they can force a deal with collecting societies
- Pay a lump sum or buy out with authors can be a good idea to have less administration
- “Flat fee” for publishers (not for collecting societies)

- For the negotiation part: look at the figures / percentages and also the actual amount of money to be paid – which figures suit best in the negotiation?
- Work with the publishers: they can push it through in other territories

Question from a Pearle* member: who should deal with the rights clearance: production company or venue that invites the company?

- Production company should take everything in their hands
- Information to be communicated to the venues

Mr. Herman Croux is partner at the Brussels law firm MVVP and has been active for more than 20 years in the field of creative industries, technology, media, entertainment, web-driven industries. His practice as an IP lawyer and as a commercial contract lawyer has a strong international focus (advice, contracts, litigation). He was chair of the Copyright and Entertainment Law Committee of the International Bar Association and is a Board Member of the Belgian Copyright Association. He obtained his law degree and philosophy degree at Leuven University. Personal interests include photography and architecture.

Report by Lies Martens

This activity is part of the EFA RISE project implemented with the support of the Creative Europe Programme of the European Union



Co-funded by the
Creative Europe Programme
of the European Union



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