

# Performing artists in the IP law of Bulgaria and the international treaties

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The paper discusses the figure of the performing artists as holders of particular type of rights, called related rights or also called **neighboring rights**. It aims to reveal in details the following points: **who are** the performers; **what kind of** rights they are granted by law; **what can they do** with such rights; **what is the duration** of the protection of these rights and **how these rights deal** with the copyright. As well as what is the difference between the literary and artistic works (whose authors are granted copyright) and the performances of those literary and artistic works (whose performers are granted related rights).

## 1. Performing artist.

Generally speaking **Performers** are persons such as **actors, singers, musicians, dancers** and other persons who **act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works**. For their performance they are given by law with **specific type of rights**, which are very similar to the copyright. Because these rights occur after the copyright and are based on them, **they are called Related rights** (related to the copyright). Bulgarian national law sticks to the Rome Convention, but under the influence of French law expands the range of the holders of related rights and states that these are also the performers of circus and variety tricks and dolls' tricks. According to the Bulgarian Law on Copyright and Related Rights, the definition for “performer” has been extended as follows: “*Performer shall be a person who presents, sings, plays, dances, declaims, acts, directs, conducts, comments, dubs*

*roles or performs in other manner a work, circus or variety performance, puppet show or a folklore work.”. /Art. 74 Law on copyright and neighboring rights, 2014/*

By their nature, the related rights are **exclusive rights** and just like the copyright, they shall ensure their holders the opportunity to make use of their performances and to authorize under certain conditions the use of the performances by third parties, such as cafes, restaurants, radio stations, television channels, discos, theatres and many others called users. In addition to the performers, related rights are also recognized to the following categories: **producers of phonograms, producers of first fixations of films** or other audiovisual work, as well as **radio and television organizations**.

The first international Treaty which arranges the performers' rights is the **Rome Convention (1961)**. The full name is International Convention for the protection of performers, producers of phonograms and broadcasting organizations. The Convention is adopted on October 26<sup>th</sup> 1961 and entered into force on May 18<sup>th</sup> 1964. The Rome Convention established a minimum guaranteed protection for performers, producers of phonograms and broadcasting organizations. However each country that would like to join it, shall adopt in its domestic legislation the minimum requirements for protection of the rights. Another important requirement for becoming member of the Convention is that a State wishing to join the Rome Convention must have ratified first the Berne Convention and the Universal Copyright Convention, in other words, this State might have arranged first the copyright matters in its national legislation. Maybe this condition intended to prevent from the ridiculous situation in which a Member State arranges in its domestic law the related rights without having arranged the copyright before that. This would result for example that many authors be placed in a quite disadvantageous position compared to performers. For example the author of a musical work might not have enough rights over its work for its commercial use, however the signer who performs his work would have such and would be able to gain revenues.

The duration granted to performers' rights under the Rome Convention is **20 years**.

## **2. Moral and economic rights of a performer**

At the national level in most countries, neighboring rights (including performers rights) have been arranged much later than the copyright, namely in the first half of 20th century. The preconditions for this are many. For example: the development of technology, the advent of the gramophone, the radio, the cinema and the television. The first country in

which rights of performers were granted is **Austria**. After **Argentina** and **Italy did the same**. And this should not surprise us, since both Argentina and Italy are very famous worldwide for their original Performing Arts and the tradition in creating such type of cultural products.

Related rights always presume a work protected by copyright. Performers are mostly protected if they perform works. For example, in some national laws and under the Rome Convention protection for the Variety show artist and the circus artists is not provided, mainly because there is no existing work to be performed according to the copyright legislation.

Under the national law and European legal system, the protection for the performers arises automatically, it does not require any specific actions to be taken by the performers. This is the main principle in and the main difference between it and the US copyright legislation. The Continental legislation does not require originality or creativity of the performance. Any kind of performance is protected by the law. The same refers to the copyright protection.

Similarly the copyright, the related rights constitute a **bundle of number** of individual powers. Based on the nature and purposes of their establishment, they are conditionally divided into two categories: **moral rights** and **economic rights**.

### **2.1.Moral rights**

The first category of rights is intended to have rather **moral features** and they have been established in order **to ensure** and **maintain the relation** of the artist with his performance. For example the first moral right states that the performing artist shall enjoy the right “to demand that his name, pseudonym or stage name be indicated or otherwise communicated in the customary manner at each live performance, or on every use of a recording of that performance when it is reproduced or used in any other manner. We call this type of moral right briefly “the right of a name”.

The other moral right, provided to the artist is “the right to require that the recorded performance is preserved entire and unmodified at its reproduction or use in any other manner”. We call this type of right “the right of integrity”.

The “right of name” shall be inalienable. It cannot be transferred to third parties. The transfer of the second right, “right of integrity” may be only explicit and in written form.

### **2.2. Economic rights.**

The **second category** of rights deals with the opportunity **for obtaining economic returns** from the use of the performances. These type of rights are the so called **material**

**rights.** It is also accepted in theory and practice such type of rights to be called **economic rights.** As we said above the related rights constitute a **bundle of number** of individual powers. In fact, these individual types of powers of the economic rights represent the different possible ways of uses of the protected object (the performance). Their main purpose is to ensure a financial return of the intellectual work and efforts invested by the artist. For any use by third parties in any particular way of specific performance, the law provides that **equitable remuneration shall be paid by the user** to the performers.

Bulgarian Law on Copyright and Neighboring rights stipulates that the performer shall have the **exclusive right** to permit for compensation:

- **wireless broadcasting of his performance**, transmission and retransmission by cable, as well as **sound or video recording** of the performance, **reproduction** of the recordings on audio or video carriers and their distribution;
- **public performance, wireless broadcasting, transmission and retransmission** by cable of these recordings.
- providing access to his recorded performance or part of it by wireless means or by cable to unlimited number of people in such a way that it may be accessed from a place and at a time individually chosen by each of them. This is the so called **“Internet right”**
- **import and export** to third countries of copies of the recording of the performance in commercial quantity, regardless whether the copies are lawfully produced or in infringement of the rights referred to in item 1.

In shorten, we can those type of rights are better known as the right to make **sound recording or visual recording** of the performance, the **right of fixation** and **broadcasting**, and etc.

Performing artists shall grant the above mentioned economic rights under the by a written contract. The compensation may be negotiated as portion of the revenues, single payment or in other form, freely chosen by the parties.

The **term of protection** to be granted for the performers’ rights under the Bulgarian and European legislation /Directive 2011/77/EU/ shall **last for 50 years**. The term is calculated from the 1<sup>st</sup> January of the year which follows the year in which the performance took place—for performances not incorporated in phonograms. However according to the latest amendments at the European legislation, namely according to Directive 2011/77/EU, the national law stipulates that for performances of which a phonogram is made, and it has been legally published or communicated to the public, the duration of the rights shall last **70 years**

computed from the 1<sup>st</sup> January of the year after the year of the publishing of the phonogram or the year of the communication to the public, the one that took place first.

### **3. Related rights and the copyright.**

The Related rights are always in subordination to copyright. The term of protection of related rights is always shorter than that of copyright, although at European level some measures for improvement have already been taken, as mentioned above. The scope of protection of related rights is significantly smaller than the copyright. Although during the last decade things have started to change internationally, the performers' rights have always been the weakest protected at national, European and at international level. The reasons are different. It is indicated that even Adam Smith was giving an example that the labor of the actors, musicians, singers and dancers is an "unproductive labor". Today, however, things have changed. And the values have changes. There are increasing number of examples in which a work, like a song, movie or other is not so much remembered with its author, as with the artist performing it. Yet the artist is the person who stands in front of the audience and represents the literary or artistic work to the audience and as such his efforts shall be fairly recognized.

At last, we shall refer to a specific regime of the performing rights when it comes to the collective performers. The collective performers act in artistic groups such as choir, orchestra, ensemble and other artistic group. For easy management of their rights they shall authorize in writing only one person to grant the authorizations regarding the use of their performances. However here there is some specification. The Law provides that the soloists and the conductor, as well as the director of a performing art work shall provide authorization separately. In order to be easy recognized by the society and the audience, the artistic groups chose an artistic name of the group, which shall be registered in a specific registry, managed by the Ministry of Culture. The term of the protection of a group's name lasts 10 years after the termination of the group's activity. Is it not permitted two groups with the same name. The name of the artistic group shall always be indicated or announced in the usual manner and this is their moral right that we called above "the right of a name". Along with the name of the artistic group, the names of the soloists, the conductor and the director of the performing art work, unless agreed otherwise with these persons, shall be indicated or announced in the usual manner separately.

In conclusion, performing rights are very specific and important type of related rights. Their international recognition is as much important as the copyright one and they must not be underestimated. With the development of the digital and information technologies the opportunities for access to protected works and performances increases significantly. The audience pays for obtaining an access to its favorite performances, which would accordingly reflect to the contribution of the performing rights to the copyright industries and the economy as a whole.

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