



QUESTIONNAIRE

Answers of Israel ALAI

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PANEL I – PERFORMER’S RIGHTS – A COMPARATIVE OVERLOOK

1- What types of performers are there according to your legal framework?

Performers of literary, artistic, dramatic and musical works (e.g., actors, singers, musicians, dancers, people who read texts)

2- Do all types of performers enjoy Neighbouring Rights protection?

Yes – all of the above do

3- Does the law distinguish between featured/non-featured performers? How?

No

4- Which rights are awarded to each type of performer?

NOTE: OUR ANSWERS ARE IN ACCORDANCE WITH THE CURRENT LEGALISATION, BEING THE PERFORMERS’ AND BROADCASTERS’ RIGHTS ACT, 1984. THE MINISTRY OF JUSTICE HAS STARTED THE PROCEDURES FOR INTRODUCING A BILL TO UPDATE THE ACT. THEREFORE, THE SITUATION REGARDING THESE RIGHTS WILL MOST LIKELY CHANGE IN THE FUTURE

I- Live performances:

- a) Fixation; yes
- b) Broadcasting; yes

II- Fixed performances:



- c) Reproduction; yes
- d) Distribution; yes
- e) Rental; no, but will probably be introduced in the future
- f) Making Available to the public; no, but will probably be introduced in the future
- g) Communication to the Public; No (part covered in part by the broadcast right)
- h) Public performance; only a remuneration right.
- i) Broadcasting; yes
- j) Retransmission; yes (covered by broadcast right)
- k) Direct Injection; yes (covered by the broadcast right)

III- Are moral rights attributed to performers? Which prerogatives does it comprehend?

Yes. The right of integrity and the right of attribution.

- 5. What is the nature of those rights? – Statutory? Contractual? statutory
- 6. Which of them are exclusive rights/remuneration rights? All Exclusive rights, except Public Performance
- 7. Which exceptions/limitations generate remuneration rights for performers? Recoding for home and personal use
- 8. Which rights are transferred to music/audiovisual producers? For how long?
There are no statutory rules, This depends on the contract.

- 9. Are there any legal presumptions of transfer or is it voluntary/contractual?

If the performer has given his agreement to fixation, then he is deemed also to have given the right of reproduction for the same purpose for which he gave his agreement to fixation. This presumption is rebuttable

- 10- Are there any unwaivable and inalienable remuneration rights?

The right of equitable remuneration for public performance

- 11- What type of compensation is paid in exchange? How is it set? For how long?

Equitable remuneration set by contract between the CMO (collective management organization) and the user. This is normally an annual blanket arrangement. In the absence of agreement, the remuneration has to be set by the court



12- How is “streaming” qualified in your Country for rights awarding purposes?

Making available / broadcasting

13- Whose authorization is it required for the “streaming” of music/audiovisual content?

All rights holders (producers, authors, performers)

14- What is the estimated level of copyright infringement in your Country?

There are no reliable figures

15- What is the current level of disclosure on economic returns from digital platforms?

There is no disclosure

16- How is performer’s compensation determined for each business model?

By Private contract, or through CMO’s

17- Are there minimum amounts due? Any other economic benefits?

No

18- Do UGC platforms contribute to such compensation schemes? How?

Not for neighboring rights

19- Has the Beijing Treaty been implemented in your Country, at least, in part?

No

20- Which rights are collected by Collective Management Organisations (CMOs)?

Broadcast, public performance and for some also rental and making available

21- Which CMOs represent performers in your Country?

Eshkolot and Eilam

22- Do these CMOs comply with transparency principles?



Yes, to a certain degree

23- Is it possible to find out how much income is provided by each type of rights?

No

24- What is the current litigation level for performers' rights in your Country?

low

25- Are there any relevant Court Decisions concerning performer's rights?

very few

26- Does the Principle of National Treatment apply to all foreign performers?

No

27- Are there "appropriate and proportionate remuneration" provisions?

No

28- Are CMO's mandates always exclusive and encompassing all rights?

No

29- Are there any partial/global revocation of transfer of rights agreements provisions?

No

30- Are there any provisions on contractual remuneration adjustments?

No

1- Which rights are awarded to phonogram producers?

NOTE: PHONOGRAMS ARE PROTECTED IN ISRAEL UNDER THE LAW OF COPYRIGHT.

- a) Reproduction; yes
- b) Broadcasting; Yes



- c) Communication to the public; Not as such, but partially covered by the broadcast right
- d) Distribution; In Part (knowing distribution of infringing copies is an infringement).
- e) Rental; Yes
- f) Making available to the public; Yes
- g) Cable Retransmission; Yes (covered by the broadcasting right)
- h) Direct Injection; Yes (covered by the broadcasting right)
- i) Any other rights? Public performance

2. What is the nature of those rights? – Statutory? Contractual? Statutory

3. Which of them are exclusive/remuneration rights? All are exclusive

4. Which exceptions/limitations generate remuneration rights for phonogram producers?

Compulsory recording license

5. Are there any legal presumptions of transfer or is it voluntary/contractual?

No legal presumption

6. What type of compensation is paid in exchange? How is it set? For how long?

This is a matter of contract

7. How is producer's compensation determined for each business model?

This is a matter of contract

8. Are there minimum amounts due? Any other economic benefits?



No minimums, no other benefits

9. Is digital piracy/streamripping still a major concern for phonogram producers?

Yes

10. Which rights are currently being collected via CMOs?

Public performance, broadcast

11. Which CMOs represent phonogram producers in your Country?

The Federation of Phonogram Producers (Israel IFPI) and the Federation of Israeli and Mediterranean Music ("HaPil").

12. Do these CMOs comply with transparency principles?

Yes, to a certain degree

13. Is it possible to find out how much income is provided by each type of rights?

No

14. What is the current litigation level for phonogram producers in your Country?

Quite high (The CMO's file many suits against infringers)

15. Are there any relevant Court Decisions concerning phonogram producer's rights?

Yes there are several:

C.C. (Dist. T.A.) 47957-12-13 Dotan v. Twist Animation LTD (2017)

A.T. 3574/00 The Israel Federation of Phonograms and Tapes, Ltd. v. The General Director of the Antitrust Authority (2004)

C.C. 6327-09-11 The Israel Federation of Phonograms and Tapes, Ltd. v. Care Vision, Ltd. (2013).

16. Are there any revocation of transfer of rights' agreements provisions?



No

17- What is considered a “phonogram published for commercial purposes”?

A phonogram that was published for sale or other form of payment, or on a commercial basis (i.e. ad-based revenue)

19- Is there any type of phonograms that is published for non-commercial purposes?

There may be

20 - Which rights are involved in audiovisual synchronization (“production music”)?

- The reproduction right. The CMO’s grant synch rights to broadcaster for their own platforms as part of the blanket licenses.

21- Which rights are involved in mood music/sound branding licensing?

There are some libraries that license this music rights-free. Otherwise, the general rules apply

PANEL III- BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS

1- Which rights are awarded to broadcasters in your Country?

a) Fixation; Yes

b) Reproduction; Yes

23- What is the most recent estimation of rights’ loss on account of digital piracy in your Country?

Not available

24- What is the current rule in terms of audiovisual exploitation windows in your Country?

This is a matter of contract.

25- Which CMOs represent audiovisual producers in your Country?



AGICOA represents foreign producers re cable/satellite retransmission. The Association of Israel Film and TV Producers represents audiovisual producers for private copy remuneration and is seeking permission from the competition tribunal to operate in other areas.

26- Do these CMOs comply with transparency principles?

N/A

27- Is it possible to find out how much income is provided by each type of rights?

No

28- What is the current litigation level for audiovisual producers' rights in your Country?

Low

29- Are there any relevant Court Decisions concerning audiovisual producer's rights?

C.A. 2173/94 Tele-Event, Ltd. v. Arutzei-Zahav & Co., 55(5) P.D 529 (2001).

C.C. 4757/08/07 (Dist. T.A.) AGICOA v. Hot (2011).

30- Are audiovisual producers acting as One-Stop Shop in relation to retransmission operators?

No

PANEL IV - DATABASE PRODUCERS' AND PUBLISHERS RIGHTS

1- Are Databases legally protected in your Country? How?

Original databases are protected by copyright

2- Is there a Sui Generis Database producers' right or equivalent protection in your Country?

No

3- Is it possible to evaluate its efficiency and level of enforcement?

N/A

4- Is there any different form of protection for Database producers or for ownership of data?

No



5- How does it work? Is it effective?

N/A

6- How do the courts of your Country balance the sui generis right with freedom of information and freedom of competition?

N/A

7- Is the sui generis right protected against circumvention of TPM designed for controlling access?

N/A

6- Is there a special protection against online uses of press publications in your Country?

No

8- Does it apply to scientific journals and hyperlinks? How does it work?

N/A