



**ALAI CONGRESS 2022 – ESTORIL, Portugal**  
**CENTRO DE CONGRESSOS DO ESTORIL**  
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**QUESTIONNAIRE**

**FOR THE CZECH REPUBLIC**

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During the writing of the national report, it is requested that the relevant sources (norms, legal literature, Case-Law) be accurately cited, whenever possible, in footnotes, indicating the main abbreviations used and using consistent terminology.

When mentioned for the first time, specific national concepts and institutions that may not be known outside their legal system should be made explicit.

The answers should be concise, and the structure of the questionnaire should be preserved, as much as possible, to facilitate the work of comparative analysis and presentation by the rapporteurs at the Congress.

As questions regarding remuneration and collective management may have already been answered in previous national reports, it is kindly requested that a reference is made to the relevant report, including a link in case it remains online, provided that it is still up to date. If that is not the case, national groups are kindly requested to update the information given by previous reports.

**MAIN THEME: COPYRIGHT, NEIGHBOURING AND SPECIAL RIGHTS - STATE OF AFFAIRS AND FURTHER OUTLOOK**

**PANEL I – PERFORMER’S RIGHTS – A COMPARATIVE OVERLOOK**

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

The Czech Copyright Act („CA“) contains an open list of performers – every person that performs a work of art and variety and circus artists are considered performers. Expressly are mentioned (in this order): actors, singers, musicians, dancers, conductors, choir masters, and directors. The term „directors“ was included in the parliament (not in the governmental proposal) and has been criticised since then – according to case law, this includes stage directors (film directors are considered authors).

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

Yes.

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

No, it does not. Any performer enjoys the same protection.

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

Performers enjoy practically the same rights as authors including:

**Exclusive (contract) rights:**

Fixation;

Reproduction;

Synchronisation;

Distribution;

Lending and Rental;

Making Available to the public

Communication to the Public;

Public performance;

Broadcasting (except of the use of performances fixed on commercial phonograms);

Retransmission (except of the use of performances fixed on commercial phonograms);

Direct Injection;

**Statutory remuneration rights (collected by CMO):**

Remuneration for broadcasting and rebroadcasting of commercial phonograms

Remuneration for rental;

Special right under the eu directive: annual supplementary remuneration

Copyright levies for blank media

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

Yes, every performer enjoys the moral right under which they can decide about the first publication (disclosure) of the performance. They can also object to any distortion, mutilation or other change of their performance which is detrimental to their reputation.

Soloists, stage directors, conductors and choir masters also have the right of paternity, including the right to claim the performance and to decide about the way the performer is named whenever the performance is used (if the performance is performed in a collective, then only the collective body may be mentioned).

7- Which exceptions/limitations generate remuneration rights for performers?

Private copy exception (= copyright levy)

Statutory license for broadcasting and rebroadcasting of performances recorded on commercial phonograms (remuneration collected by CMO)

8- Which rights are transferred to music/audiovisual producers? For how long?

Performer's rights are non-transferable. Audiovisual and music producers acquire license in the extent agreed with the performer.

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

It is presumed that a performer who agreed to have his/her performance included in an audiovisual work granted an exclusive unlimited license, unless agreed otherwise with the audiovisual producer.

10- Are there any unwaivable and inalienable remuneration rights?

All performers' rights are unwaivable and inalienable, both remuneration rights and exclusive rights. Nevertheless, unlike remuneration rights, exclusive rights can be licensed.

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

The private copy levy is set by a decree of the ministry of culture. Remuneration for the statutory license (broadcasting and rebroadcasting of commercial phonograms) is set by tariff negotiation between CMO and users' associations.

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

As exclusive making available right (licensed).

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

Authorization of all performers involved (they grant the license to producer who then grants sublicense to streaming platform).

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

Nearly non-existent product copyright piracy but extremely high online piracy due to the proliferation of online piracy platforms in Czechia.

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

Generally speaking, the amount of revenue for individual performers from the digital platforms are insignificant.

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

By negotiation.

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

No, there are no statutory rules for minimum license remuneration or similar rules. There is bestseller clause (if the performer's remuneration is grossly unfair when compared to the revenue of the licensee) which is virtually not invoked.

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

No, not at all.

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

No, it has not.

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

All statutory remuneration rights plus the following exclusive rights:

Reproduction (only copying for the purpose of broadcasting and public performance);

Synchronisation (only for own productions of TV broadcasters)

Rental and lending;

Making Available to the public (only the use of commercial phonograms in catch-up services of broadcasters)

Public performance (in-store and horeca);

Broadcasting;

Retransmission;

Direct Injection

21- Which CMOs represent performers in your Country?

INTERGRAM

22- Do these CMOs comply with transparency principles?

Yes.

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

Yes.

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

Very low by individual performers. The INTERGRAM society has been always engaged in numerous disputes.

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

Numerous.

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

No, we have EU-wide exhaustion principle.

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

No, not yet (will be after implementation of the DSM directive).

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

The mandates are always exclusive. The CMO enjoys statutory monopoly. It only administers the rights named above. Rightholders have the option to withdraw certain rights (except of mandatory collective management) but they very rarely utilize this option.

29- Are there any partial/global revocation of transfer of rights agreements provisions?  
Yes, the performer has the right to revoke the exclusive license for non-utilization after two years (under certain conditions). Also, they have the right to revoke license after 50 years under the EU directive.

30- Are there any provisions on contractual remuneration adjustments?

No, except of the bestseller clause mentioned above.

## **PANEL II – PHONOGRAM PRODUCERS' RIGHTS**

1- Which rights are awarded to phonogram producers?

### **Exclusive (contract) rights:**

Reproduction;  
Synchronisation  
Distribution;  
Lending and Rental;  
Making Available to the public  
Communication to the Public;  
Public performance;  
Broadcasting (except of the use of commercial phonograms);  
Retransmission (except of the use of commercial phonograms);  
Direct Injection;

### **Statutory remuneration rights (collected by CMO):**

Remuneration for broadcasting and rebroadcasting of commercial phonograms  
Copyright levies for blank media

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

See above.

3- Which of them are exclusive/remuneration rights?

See above.

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

Private copy exception (= copyright levy)  
Statutory license for broadcasting and rebroadcasting of commercial phonograms (remuneration collected by CMO)

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

No.

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

The private copy levy is set by a decree of the ministry of culture. Remuneration for the statutory license (broadcasting and rebroadcasting of commercial phonograms) is set by tariff negotiation between CMO and users' associations.

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

Negotiation.

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

No.

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

Less than in the past but it still remains a significant challenge.

10- Which rights are currently being collected via CMOs?

All statutory remuneration rights plus the following exclusive rights:

Reproduction (only copying for the purpose of broadcasting and public performance);

Rental and Lending;

Making Available to the public (only the use of commercial phonograms in catch-up services of broadcasters)

Synchronisation (only synchronisation for own productions of TV broadcasters)

Public performance (in-store and horeca);

Broadcasting;

Retransmission;

Direct Injection

11- Which CMOs represent phonogram producers in your Country?

INTERGRAM.

12- Do these CMOs comply with transparency principles?

Yes.

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

Yes.

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

As with performers.

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

As with performers.

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

No, not at all.

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

Phonogram released on CD or other discs in commercial distribution or phonograms made available online (not as part of video), including music libraries. They do not include recordings of broadcasters which were only broadcasted.

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

See above.

19 - Which rights are involved in audiovisual synchronization ("production music")?

Reproduction right

Synchronisation right (right to synchronise the phonogram with the picture of an audiovisual work)

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

It depends on the way how such music is used...

### **PANEL III- BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS**

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

#### **Exclusive (contract) rights:**

Fixation;

Reproduction;

Synchronisation

Distribution;

Lending and Rental;

Making Available to the public

Communication to the Public;

Public performance;

Broadcasting;

Retransmission;

Direct Injection

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

Contractual.

3- Which of them are exclusive/remuneration rights?

Only exclusive rights.

4- Which exceptions/limitations generate remuneration rights for broadcasters?

N/A

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

N/A

6- What is the relevance of copyright infringement in relation to broadcasters' rights?

Relevant mainly in the field of sport events.

7- Is digital piracy/streamripping still a major concern for broadcasters?

Yes, indeed. Mainly in relation to their own original TV series, sport events and other TV based content.

8- Do UGC platforms contribute to broadcasters' rights? How?

No.

9- What is the current litigation level for broadcasters' rights in your Country?

Not significant. The broadcasters base their litigation on audiovisual producers' rights rather than broadcasters' rights.

10- Are there any relevant Court Decisions concerning broadcasters' rights in your Country?

Not really.

11- Are broadcasters acting as One-Stop Shop in relation to retransmission operators?

No, they only license their own signal, other rights need to be cleared through CMOs.

12- Which rights are awarded to audiovisual producers in your Country?

**Exclusive (contract) rights:**

Reproduction;

Synchronisation (of an audiovisual recording with another audiovisual recording)

Distribution;

Lending and Rental;

Making Available to the public

Communication to the Public;

Public performance;

Broadcasting;

Retransmission;

Direct Injection;



**Statutory remuneration rights (collected by CMO):**

Copyright levies for blank media

13- What is the nature of those rights? – Statutory? Contractual?

Contractual.

14- Which of them are exclusive rights? Which of them are remuneration rights?

See above.

15- Which exceptions/limitations generate remuneration rights for audiovisual producers?

Private copying exception.

16- Which rights are transferred to audiovisual producers? For how long?

There is no transfer of rights. The audiovisual producer only acquires a license under the terms agreed with the licensor.

17- Are there any legal presumptions of transfer towards audiovisual producers?

There is a rebuttable presumption that a performer or author who agreed to have his/her performance/work included in an audiovisual work granted an exclusive unlimited license, unless agreed otherwise with the audiovisual producer. The same applies to film director.

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

As with phonogram producers.

19 - How is audiovisual producer's compensation determined for each business model?

As with phonogram producers.

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

As with phonogram producers.

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

As with phonogram producers.

22- Is digital piracy/streamripping still a major concern for audiovisual producers?

As with phonogram producers, perhaps even more.

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

N/A

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

It is left on the contractual negotiation of the parties.

25- Which CMOs represent audiovisual producers in your Country?

INTERGRAM

26- Do these CMOs comply with transparency principles?

Yes.

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

Yes.

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

Significant.

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

Yes.

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

No. Audiovisual producers do not enter into license agreements with retransmission operators. The necessary rights must be obtained through INTERGRAM and CMOs representing authors plus through individual broadcasters.

#### **PANEL IV - DATABASE PRODUCERS' AND PUBLISHERS RIGHTS**

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

Under the EU directive, either as a work ("original" databases) and/or under a sui generis right of database maker.

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

Yes.

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

It is rarely litigated and its efficiency is difficult to evaluate.

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

Trade secrets law.

5- How does it work? Is it effective?

Not really.

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

There is very limited case law.

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

Yes, it is.

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

It is now drafted as a bill discussed by the parliament. Presumably, it will be introduced in autumn 2022.

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

No, it does not. In accordance with the DSM directive it only applies to news publications.