COPYRIGHT AND AUDIOVISUAL WORKS IN THE EUROPEAN UNION COUNTRIES: Assessment and Outlook, Towards an Improved Creation and Dissemination of European Cross-Disciplinary Artistic Works

Author: Valéry Dor
Translation from French: Maria Castro

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The fast-evolving technological developments in terms of the capture and diffusion of moving or still images, accompanied or not by sound, have brought to light the every so often obsolete use of traditional concepts in copyright law. This seems clearly out of pace with the contemporary dynamics of cross-disciplinary artistic work that largely promotes the collaboration between creators based in different European countries.

The 'Institutes' of Emperor Justinian published in 533 comprised the first two paragraphs ever written stating the difference between the ownership of a graphic work or a text and its supporting medium. This led to the recognition of the author's legal right to his/her own creations, and anticipated the modern concept of copyright in roman law countries.

Steadily, this prompted the emergence of an extremely protective copyright law regarding authorship in countries such as France, Germany, Belgium, The Netherlands and Finland. In these countries, moral and economic (or proprietary) rights allow authors to retain control over the destiny of their creative work. Conversely, in countries with an Anglo-Saxon legal system a more utilitarian and economy-based approach has prevailed: once the exploitation rights over the work have been transferred, the author keeps no further control.

However it must be noted that in both these legal systems - author's rights *à la française* (*droits d'auteur*) and Anglo-saxon *copyright law* - the emergence of digital technology and the internet has drastically changed the creative context and circulation of art works (both at national and international level), making it harder to control.

The relentlessly elaborated legal framework at national, European, and ultimately international level, have progressively been challenged by consumers claiming an evolution of the regulations yet without truly proposing a more satisfying system in regard to the authors's remuneration.

In this way, Finland became in July 2013 the first country in the world to propose the voting of a copyright law drafted by the citizens themselves. Termed 'The Common Sense in Copyright Act' and calling for a fairer legislation, this proposal was signed by 50,000 Finnish citizens and submitted for examination by the parliament in January 2014. This is the type of initiative that is liable to grow in scope across the 28 state members of the European Union in a near future.

However, in the existing Code, the creator/s as well as the producer/s of a sound piece, audiovisual work, or film, must be fully aware of the current legal framework so as to avoid any difficulties that could hamper the creation of the work, as well as its funding and circulation.

It seems, thus, convenient to understand the classic notion of *copyright* that is currently in force in each of the six member states that participate in this Masters project. From this point forward, international conventions and European regulations can be addressed, as well as the practicalities involved and any possible ways to implement its reform.

Firstly: Legal framework surrounding sound and audiovisual works, and the social rights pertaining to the stakeholders

A. Status of the intermittently employed (seasonal) workers in France, by derogation of the common labour law

In France, under legislation created in 1936 which is unique in the world, technicians are subjected to a derogatory status between periods of work and unemployment, considering that they are salaried employees.

In order to receive the unemployment benefits paid by an inter-professional solidarity fund, the seasonal worker must justify a minimum number of hours during a given period. They must have worked at least 507 hours (corresponding approximately to three months of labour at an average of 8 hours per day) during the last 319 days in case they are artists, or the last 304 days in case they are technicians, that is for around ten months.

This is a favourable legal system that is repeatedly threatened due to alleged abuse.

B. Status of the seasonal workers in other European countries

In most other countries these workers have a liberal professional status (self-employed). For example in Germany and the United Kingdom there are no unemployment benefits specifically for the jobs that correspond to the French intermittent workers.

C. National, European and international regulations on Acoustics

Currently each European country has its own measurement methodology and set of requirements regarding acoustics. Due to the political and socio-economic changes that Europe has experienced, numerous international standards (ISO) have acquired a European status (EN ISO). In this way, national standards of acoustic measurement coexist side by side with European standards. Over time, all the national standards defining methods of measurement and acoustic quantities should be replaced by their European counterparts.
Such harmonisation should promote communication and international trading, in particular by lifting obstacles to the import and export of products.

However, in order to find their way around such a tangled web of standards, companies should rely on effective assistance. This is needed not only to interpret technical specifications that make reference to standards but also to analyse the results of acoustic measurements made on products, as well as understanding the contents and scope of such standards.

There are four major groups of standards regarding acoustics which define:
- requirements
- single-number indicators
- measurement methods
- calculation methods

This classification provides a framework to structuring standards documentation through a clear displaying of its contents. Such framework can be evoked in the case of the six countries involved in this project.

1. BASIC NOTIONS OF COPYRIGHT IN EACH OF THE SIX COUNTRIES INVOLVED:

1.1 Notion of Sound and Audiovisual Work: definition and characteristics

The notions of *sound work* and *audiovisual work* are understood in a consistent way in the six member states involved, given that these countries are all part of the *Berne Convention* which rules the protection by copyright of literary and artistic works at international level.
This convention refers in *article 2* that musical compositions (with or without words), as well as cinematographic works (to which are assimilated works expressed by a process analogous to cinematography) are considered as literary and artistic works liable to copyright protection.

It seems nonetheless necessary to discern the notion of sound and audiovisual work in each of these six countries, even if the legal regulations in France, Belgium, The Netherlands and Germany are all quite similar.

1.1.1 Notion of Sound and Audiovisual Work in National Law

- **French Law**

The French Code of Intellectual Property considers in *article L112-1* that copyright (*droits d'auteur*) protects all authors of intellectual work, independently of genre, form of expression, merit, or purpose. In this way, copyright protects all the works that have been put into form whatever their state of completion; any ideas that have not been materialised in a tangible way are thus excluded.
Furthermore, *article L112-2* (from the same code) specifies and lists the type of works that fall under protection by copyright, among which are: musical compositions (with or without words), cinematographic works, and other works consisting of sequences of moving images (with or without sound), and together referred to as *audiovisual work*s.

In this way, French national legislation protects all musical works that display originality in terms of melody, rhythm or harmony. Any piece of music presented in the form of a written score can be protected by copyright; in contrast, it is not required to provide a score to ensure the protection of a musical work. On that account, an improvisation is liable to be protected by copyright as long as it is original.
However, musical works that are issued from traditional folklore cannot be protected and neither can those pieces that have entered the public domain.

On the other hand, the Code of Intellectual Property protects all audiovisual works, including feature films, television movies, news broadcasting and other information programs, short films, fiction works, and animation. Multimedia pieces, which are also protected by copyright, are not considered as audiovisual works.

- **German Law**

The German copyright law issued on 9 September 1965, regulates the protection of literary, scientific, or artistic works that are personal intellectual creations. That is to say that the work must not result exclusively from mechanical procedure or craftsmanship, and must contain a certain degree of creativity.

In fact, unlike French law, the German copyright legislation requires a significant amount of originality in order to grant protection to an art work in terms of authorship. The degree of originality required differs according to the nature of the work. In this way, for works of pure art such as music, film or literature, the required standard is minimum. Conversely, in the case of works of applied art, the degree of originality required is higher. Film and sound belong to the group of works that are protected by German law.

A significant difference between German law and its French counterpart is that it does not grant any presumption of authorship to the co-authors of an audiovisual work. In fact, German law does not specify who are the copyright holders of a cinematographic work and case-law operates on a case-by-case basis.
In that sense, the court may grant authorship to a cinematographer, an editor, or a sound engineer, when they go beyond the simple execution of the director's orders and take initiatives that have an impact on the creative development of the work.

- **Belgian Law**

The Belgium copyright legislation is quite close to French law since it provides a similar type of protection.
Therefore, all literary, scientific, and artistic productions, independently from their form of expression, are liable to copyright protection during 70 years after the author's death, in particular in the case of audiovisual and sound works, and as long as they are original.
In this sense, a piece of work is considered to be original when it bears the mark of the creative personality of its author.

- **Dutch Law**

The Dutch copyright law (*Auteurswet*) assures the protection of authorship regarding literary, scientific, artistic, and other works during 70 years after the author's death.
This legislation grants protection under the title 'artistic works' to audiovisual works such as films, television and radio shows, and sound works (including music pieces with or without lyrics) provided that the work presents evidence of being original, that is to say it should reflect the creative style of its author.
Dutch law is very similar to French law since it has drawn on the French code to modify its own legislation.

- **Finnish Law**

Any literary or artistic work can obtain copyright protection on condition of being a piece of original and independent work, and therefore it must ensue from the author's creative expression. Ideas and concepts are not protected.
Finnish copyright law protects thus literature, graphic and visual arts, as well as audiovisual works, namely film and music composition.
Finland has ratified the *European Convention on Cinematographic Co-Production*, which defines as 'cinematographic work' a work of any length or medium, in particular cinematographic works of fiction, animation, and documentaries, complying with the provisions governing the film industry in force in each of the parties concerned, and intended to be screened in cinema venues.

- **British Law**

In the United Kingdom, authorship is protected by copyright, which is the equivalent of the French *droit d'auteur*, and includes both audiovisual and sound works.

The British Copyright Act of 1988 defines audiovisual work as a sequence of moving images linked to each other and meant to be shown with the aid of machinery. This is notably the case of cinematographic works that can be regarded as audiovisual works when they are screened, due to the impression of movement.

In what concerns sound works, British law establishes a clear distinction between *sound recordings* - that fall under the protection of copyright when they result from a series of musical sounds fixed on a specific medium - and *musical works* - which can include text as integral part of the music and encompass three elements liable for copyright protection: rhythm, harmony, and melody. Sound recordings that are a mere accompaniment to a film or any other audiovisual work are excluded.

On the whole, any audiovisual or musical work, in order to be granted copyright protection, must be fixed on a tangible and stable medium.

1.1.2 From the notion of *Community Work* to the notion of *European Audiovisual Work*

The French decree of 17 january 1990 (which lays down the general principles for the broadcasting of cinematographic and audiovisual works by the providers of television services) in its article 6 defines as *Eur*opean a work that comes originally from one the member states of the European Union. Works originating from other European countries which are parties to the *European Convention on Transfrontier Television* are also considered to be European, provided that they are produced by a company based in one of those countries, and that has financial, technical and artistic responsibility over the work, or if they have been funded for the most part by co-producers established in those countries.

Works that have been co-produced under agreements concluded between the European Community and non-member countries are also considered to be part of the European audiovisual area. Likewise, works that were produced under the umbrella of bilateral co-production agreements between state members of the European Community and third countries, and financed for the most part by co-producers based in the member states, are also considered European.

Given that audiovisual and sound works are both liable for protection in all concerned countries, it is thus necessary to establish who are the copyright holders of such works.

1.2 Determining the Authorship of a Sound or Audiovisual Work

1.2.1 Natural person, legal person

- **French Law**

The Code of Intellectual Property considers in its *article L113-7* that only the natural persons who were responsible for the intellectual creation of an audiovisual work can claim authorship, and therefore it excludes any legal persons.

In addition, this article establishes a presumption of authorship regarding specific people. In this way, and unless the contrary is proved, the following individuals are considered to be the *joint authors* of an audiovisual work: the author of the script; the author of the adaptation; the author of the dialogue; the author of the musical compositions, with or without words, that were specially

composed for the work; the director; and in case the work is an adaptation of a preexisting work or script still under copyright protection, the presumption of authorship will also apply to the authors of the original work.

Audiovisual works are always considered to be a work of collaboration. This means, as defined in *article L113-2* of the above mentioned code, that more than one natural person participated in its creation. This presupposes, on the one hand, the creative input of each of the natural persons involved, and on the other, a collaborative effort between the co-authors.

In this way, each person having effectively collaborated on the creation of an audiovisual work is considered as co-author, and must exert their rights regarding the joint authorship in agreement with the other authors.

French law specifies that where the contribution of each of the joint authors is of a different kind and deemed severable from the other participants, each may separately exploit his or her own personal contribution without, however, causing prejudice to the exploitation of the common work.

Therefore the author of a cartoon character, for example, could use their creation outside the overall exploitation of the work, on condition of not being detrimental to the exploitation of the initial production .

- **German Law**

German copyright law is very similar to the French legislation since it does not concede authorship status to the producer despite the extended prerogatives of the latter.

To be protected, the work must have been created by one or several natural persons, therefore a legal person cannot obtain the authorship of such a work.

Following the example of French law, German law opts for a classification of the cinematographic work as *collaborative work* and recognises the status of *co-author* to all the natural persons who have collaborated effectively in the intellectual creation of the work.

Furthermore, just like French law, German legislation makes a distinction between the holders of copyright and the holders of *neighbouring* (also called *related*) rights.

Neighbouring rights are assigned to people who had an effect on the production of the work but who are not considered authors in default of a personal creative contribution.

Performers, such actors, dancers and singers, cannot invoke ownership of copyright and are holders of neighbouring rights, unless they can present evidence of having made a contribution that had a significant influence on the intellectual creation of the work, for example by making an improvisation.

- **Belgian Law**

The Belgian copyright legislation establishes a legal presumption of the individuals who can be considered authors of an audiovisual work (*article 14* of the *Act of 30 June 1994*). The principal director is always regarded as the author of the audiovisual work.

In addition, unless there is evidence to the contrary brought forward by a third party, the following individuals can be considered *joint authors* of an audiovisual work: the author of the script; the author of the adaptation; the author of the text; the author of graphic work, and the author of the musical compositions specially created for the work.

This means that not all collaborators of an audiovisual work can be necessarily considered as authors of that work.
In that sense, technicians, camera operators, editors and sound recordists, in theory do not hold authorship status since they are technical providers, unless they can present evidence of having made a significant contribution to the intellectual creation of the work.

- **Dutch Law**

The Dutch legislation was devised upon the French model. Hence the persons liable to be considered copyright holders are roughly the same. In this way, only the natural person can, in principle, be considered the copyright owner of a work.
Furthermore, as these works are audiovisual, and in similarity with French law, they are always considered to be collaborative work. As a result, there are several individuals who, as co-authors, are entitled to copyright and must exert jointly their rights over the work.

- **Finnish Law**

According to the Finnish legislation, the person who created the work is considered to be the author.

Finnish law confers authorship of an audiovisual work to the director, the scriptwriter, the composer of music specifically created for that work, as well as the technicians whose creative contribution is legally recognised. However, the producer is not granted authorship in the context of an audiovisual work.

- **British Law**

British legislation considers that the first owner of any copyright is the author of the work, that is the person who conceived and fixed the work on a stable and tangible medium (the work can only be granted copyright protection if it is recorded on a material support).

However, in opposition to French law, the *British Copyright Act* dissociates the concepts of *creator* and *author.* Consequently, it recognises the presumption of authorship to *legal persons*, which is unlikely to occur in France, except in certain cases restrictively noted in law.
The author of a musical work is the composer but in the case of a sound recording it is the producer. In film, the authors are the producer and the principal director, whereas in television and radio programs it is the person who makes the broadcast.

Similarly to the *droit d'auteur*, copyright foresees different statutes in the event of a collaborative work. In this way, copyright regulates the legal status of the *works of joint authorship* which is the equivalent of *collaboration work* (oeuvre de collaboration) in French law, given that an audiovisual work is always a joint work. This means that such a work is produced by the collaboration of two or more authors in which the contribution of each author blends into a whole. Each author's contribution must be protectable by individual copyright. In this way, the co-authors have rights not only over their own contribution but also regarding the overall work.
However, in contrast to French law, co-authors can exploit the work by a non-exclusive license without having to be granted permission from the other co-authors, provided that the latter receive their share of the profits generated by the exploitation of the joint work.

- **Community Law**

Community law protects audiovisual and sound works under copyright and specifies by the *Council Directive 93/98/EEC* of 29 October 1993, that in the case of cinematographic or audiovisual works the principal director of such works is considered to be the author, or one of the authors, leaving

to the member states the freedom to designate, according to their national law, other co-authors, in particular the author of the script, the author of the dialogue, and the composer of the music specifically created for the cinematographic or audiovisual work.

1.2.2 Rules on the Presumption of Transfer of Exploitation Rights in favour of the Producer

- **French Law**

In French law, the presumption of transfer of exploitation rights in favour of the producer is foreseen in *article L132-24* of the Code of Intellectual Property. In fact, this articles states that the contract established between the producer and the authors of an audiovisual work (other than the author of a musical composition, with or without words) shall imply, unless otherwise stipulated in the contract, an assignment (or cession) to the producer of the exclusive exploitation rights of the audiovisual work.

Article L132-23 of the Code of Intellectual Property defines that the natural or legal person who takes the initiative and responsibility for making the work is the producer.
Case-law determines that the *producer status* implies an involvement in any risks linked to the creation of the work, and also specifies that this status applies to the individual producer as well as to the various joint producers that may be involved in the production.

However, this legal presumption contains certain limits. *Article L132-24* of the Code of Intellectual Property states that, unless stipulated otherwise (for example, by the insertion of an opposition clause), the joint authors of an audiovisual work may freely dispose of the part of the work that constitutes their personal contribution. In any event, the presumption of transfer granted to the producer concerns only the exploitation of the work in its entirety.
Finally, the presumption of transfer to the producer does not concern the authors of musical compositions, and does not imply either the assignment of graphic and theatrical rights.

- **German Law**

In Germany, considering the absence of 'personal and intellectual creation' the producer cannot be granted authorship status. However, due to the contribution that a producer can bring to the elaboration of a cinematographic work, the legislator has endowed him/her with neighbouring rights on the film.
Neighbouring rights provide the producer with an absolute right over the cinematographic work, without any geographical restrictions and valid for the duration of the legal protection period, which ends 50 years after the first diffusion of the work.

In this way, the producer can claim a presumption of transfer to obtain the exclusive rights to use the work. This allows him/her to exploit the work in an unlimited way. Unlike France, this is not a presumption of transfer to the producer's own benefit. However German law assumes the existence of an exclusive exploitation license. In this case, only the producer is allowed to utilise the transferred exploitation rights. Consequently, he/she can also manage the protection rights of the work, including the possibility to forbid its use by any third party.

- **Belgian Law**

Belgian law also provides for a presumption of transfer to the producer of the exploitation rights of audiovisual works.
Under a*rticle 18* of the Belgian law on copyright, '*unless otherwise provided, the authors of an audiovisual work as also the authors of a creative element lawfully integrated or used in an*

audiovisual work, with the exception of authors of musical compositions, shall assign to the producers their exclusive right of audiovisual exploitation of the work, including the rights required for such exploitation such as the right to add subtitles or to dub the work.'

However, this disposition only applies to Belgian productions and the presumption of transfer does not cover all rights.

In fact, only the *audiovisual exploitation rights* that are strictly necessary for the creation of a work are presumably transferred (rights to reproduce and to perform the work, distribution rights) whereas *non-audiovisual exploitation rights* (merchandising rights, creation of derivative works, etc) are not.

Under Belgian law, it is not required to have a written audiovisual production contract but authors are encouraged to establish one with the producer. This grants the author the possibility to potentially restrict the transferred rights, for instance within a limited period of time. This can also be the opportunity to add a reservation clause through which the authors can clearly express how they prefer to be remunerated.

In practice, and for transparency sake, producers and funding organisations usually prefer to establish written contracts stipulating the transfer of rights, which limits the effect of the legal presumption.

- **British Law**

British legislation does not recognise any presumption of transfer to the producer in what concerns audiovisual works since *the* producer is directly granted with authorship status.

In fact, the presumed authors are the producer and the principal director of the production in the case of a cinematographic work, and the producers in the case of a radio or television program.

With reference to a musical work, the only author is the composer and the presumption of transfer to the producer does not apply. However, in the case of a sound recording the presumed author is the producer.

In what concerns **Dutch** and **Finnish** Law, it was not possible to access sufficiently detailed and up-to-date information at the time when this report was written.

1.3 <u>Copyright Attached to the Work</u>

Authors have two types of rights regarding their works: *economic* and *moral* rights. Economic rights grant the possibility to authorise or forbid the exploitation of a work, in particular its reproduction, performance or distribution. However, the essence of moral rights varies according to national legislation.

Reproduction rights consist of the right to copy or reproduce the work in a tangible form, by all means and on all media, for the purpose of public dissemination. This can be done in a variety of ways, such as printing, drawing, engraving, photography, as well as mechanical, electronic, cinematographic or magnetic tape recording.

Performing rights concern the right to present the work publicly without the need for a physical copy. This public presentation can be, for instance, a public recitation, a public screening, the public transmission of a broadcast programme, or the public display of an art work.

1.3.1 <u>Economic Rights</u>

- **French Law**

Under French law, *Economic Rights* cover the rights related to reproduction, performance, broadcasting, rental and loans. On the whole, they represent the author's exclusive right to exploit his/her work.
For a single author, economic rights expire 70 years after his/her death. In the case of a collective work, the rights expire 70 years after the death of the last surviving author.
Audiovisual works are always considered to be collaborative, and therefore presuppose a shared ownership of the economic rights. Like so, under a*rticle L113-3 b)* of the Intellectual Property Code, co-authors should exert their rights through a mutual agreement.
For this reason, contracts relating to the exploitation or transfer of economic rights must be signed by all co-authors.
However, a law issued on 3 July 1985 altered the field of exploitation of audiovisual works by regulating the conditions of the production contract. In principle, the producer is not assumed to be co-author but from the moment he/she takes any initiative or responsibility in the making of the work, they are assigned the exclusive exploitation rights of that work. This refers to the presumption of transfer of exploitation rights mentioned above.

Under a*rticle L132-25* of the Intellectual Property Code, and despite the presumption of transfer to the producer, each co-author receives a proportional remuneration in return for transferring the rights and for every mode of exploitation. Proportional royalties are usually the rule in distribution contracts, however this remuneration can sometimes be based on a fixed rate if complying with the requirements specifically established by law.

- **German Law**

The authors of a cinematographic work hold exclusive and absolute rights in terms of authorship. As a consequence, this gives them the right to either exploit it directly, or have someone else to do it. They also have the power to forbid the exploitation by a third party.
German legislation makes a distinction between *tangible rights,* such as reproduction, distribution and exhibition rights, and *intangible rights* which comprise performing, broadcasting and public presentation rights.

- **Belgian Law**

Similarly to French law, Belgian law provides four types of economic rights: the right to copy and reproduce the work in a tangible form for the purpose of public dissemination; the right to communicate the work to the public; the right to authorise rental or lending, and the right to distribute the work.

- **Dutch Law**

Inspired by the French model, the Dutch copyright legislation grants the author economic rights including the right to exploit his/her own work, or to allow someone else to utilise it by means of licensing or cession of rights. The author has also the power to prevent third parties of using the work. Economic rights expire 70 years after the author's death, or 70 years after the death of the last surviving co-author in the case of a collaborative work.

- **Finnish Law**

According to Finnish copyright legislation, the author can exploit his/her work for profit, and is entitled to determine in which conditions the work can be used. The author can thus issue licenses or authorise third parties to use the work by cession of rights.

Similarly to French law, Finnish legislation provides the right to reproduction through which the author can reproduce, have it reproduced, or even prevent a third party from reproducing the work.
Finnish legislation also recognises the right to public performance, that is the right to communicate the work to the public by any means of expression, as well as the right to prevent such communication.

- **British Law**

The UK copyright act recognises that the author has economic rights, in respect of which he/she has the exclusive right to reproduce or copy the work; the exclusive right to issue copies or samples of the work to the public; the exclusive right to perform, screen or play the work in public; the exclusive right to broadcast or include the work in a distribution service; as well as the exclusive right to make an adaptation the work.

1.3.2 Moral Rights

- **French Law**

French law is very protective regarding moral rights. Four types of rights are considered: the right to divulge the work, which allows the author to determine how and when the work will be made available to the public; the right to claim authorship of the work and enjoy the right to respect for his/her name; the right to respect for his/her work, which includes the right to respect for integrity and for the spirit of the work and by which the author may object the modification, suppression, or addition of elements of/to the work; and finally, the right to reconsider or of withdrawal, through which, and despite the cession of rights, the author can modify or remove the work on condition that a compensation is offered to the assignee.
Moral rights are inalienable and imprescriptible. There is no time limit after which the author, or his/her heirs, can no longer claim their moral rights.

However, French law provides for the mitigation of moral rights in the case of the co-authors of an audiovisual work. In fact, the moral rights of co-authors are suspended during the making of the work and until the completion of the final version. The aim is to prevent that the normal exercise of moral rights by one of the contributors could compromise the creation of the work.

A*rticle L121-5* of the Intellectual Property Code considers that an audiovisual work is completed when the final version has been established by mutual agreement between the director, or possibly the joint authors, and the producer.

Therefore, on the strength of court's case-law, the right to disclosure cannot be exercised if a work is not deemed to be finished in legal terms.

In addition, if one of the authors refuses to complete his/her contribution to the work, or is unable to do so, the law defines that he/she cannot object the use of their contribution for the purpose of completing the work. Nevertheless, he/she will still be deemed as author and enjoy the rights that come with it.

Regarding the exploitation of an audiovisual work, each co-author can protest against any infringement to the respect or the authorship of the work.
In the exploitation phase, moral rights retain their fullness, mostly through the right of respect for the work: any modification such as interruption, advertisement, or overlay of any kind are subject to authorisation from the joint authors.

- **German Law**

In Germany like in France, an author's moral rights are inalienable and present in substance the same attributes.
In fact, German moral rights are largely inspired by the French copyright law that created it. However, they are relatively less important in Germany.
In this way, moral rights encompass the right of disclosure, the right of authorship, and the right for the work to be respected but not the right to rescind or of withdrawal.
Anyway, under German law, moral and economic prerogatives cannot be dissociated. Copyright is thus a joint right.
In this regard, moral and economic rights in Germany expire at the same time, that is 70 years after the author's death, unlike French law which provides for imprescriptibility of moral rights.
The author can therefore obtain a compensation for the damage resulting from a violation of his/her moral rights, on the basis of tort. In that case, the author must present evidence of a fault committed by a third party and of the damage that he/she suffered as a result.
Although moral rights in Germany guarantee an extended protection to the author, it is significantly more limited than in France. Under German law, the moral rights violation can only be admitted if the nature of the infringement can compromise the author's legitimate intellectual or personal interests. This is notably the case when through the distortion or mutilation of the work, the author is affected as an individual. In fact, moral rights protect only the author's reputation and honour.
The purpose of this limitation is to facilitate the exploitation of a film, since only significant alterations, such as gross distortions or other gross mutilations of the work, are liable to prosecution by the rights holder. An evaluation is done on a case-by-case basis, based on the level of creativity of the work, its nature, as well as the degree of damage.
Nevertheless, to modify the meaning given by an author to his/her work is the only type of alteration that is strictly impossible under German copyright law.

- **Belgian Law**

Belgian copyright law is significantly similar to French law since the author's moral rights are suspended during the making of an audiovisual work and until its completion. These rights can only be exercised after the final version has been issued by mutual agreement between the director and the producer.
However, in case of a violation of the work's integrity, the author can oppose any modifications done before or after the completion of the work but he/she can only exercise this right after the final version has been issued.

- **Dutch Law**

In addition to economic rights, Dutch law also grants moral rights to the author. These are inalienable and imprescriptible. Moral rights allow, in particular, the right to oppose the alteration of the work such as by any modification, addition or suppression engendered by a third party. The Dutch law also concedes the author the right to claim authorship of the work, and the right to disclose it when and how he/she may desire.

- **Finnish Law**

Finnish law gives the author the power to decide whether to disclose the work in public. This corresponds to the French disclosure rights. Moral rights also comprise the right to claim authorship of a work, and the right to have his/her work respected, which allows the author to oppose any modifications made without permission.

- **British Law**

The UK law adopted the *Visual Artist Rights Act* (VARA) in order to comply with the provisions of the *Berne Convention* which provides for the minimum protection of authors and their moral rights. The law gives the author the right to claim authorship, the right to object any derogatory treatment of the work, the right against false attributions of the work, as well as the right to decide whether to disclose it, or not.
However, the moral rights protection provided by this law is limited to a small number of categories: visual art works, such as paintings, drawings, sculptures, signed prints in series of no more than 200 pieces, and signed photographs also in limited series.
The Moral rights of authors are thus quite limited and do not apply in the case of audiovisual and sound works.

1.4 Copyright Management (sound and audiovisual works)

Considering that the exploitation of a work is susceptible of generating profit, it seemed appropriate to create structures for the management of the exploitation and redistribution of such earnings. As a result several collecting societies were created, most often specialised in a particular artistic domain.
The collecting societies concede membership to the holders of copyright and related rights, such as authors, performing artists, or producers, and are responsible for managing the exploitation of their members's works.
When authors become members of a collecting society, they can assign their rights to the society which then acts in their name and on their behalf.
In this way, members entrust the management of their pecuniary rights to the collecting society that will be responsible for organising the dissemination of the work and receive, in exchange for its use, a remuneration that will be paid to each member.
It is not compulsory to be a member of a collecting society for the works to be protected by copyright. However, such membership has the advantage of making copyright more effective since it will ensure, on behalf of its members, that their rights are respected and duly paid.
The downside is that the membership with a collecting society has certain consequences: by assigning the management and exploitation of their works to the society, the authors can no longer decide to authorise or prohibit the use of their own works. It is a sort of temporary transfer of the exploitation rights of the work.

1.4.1 Copyright Collecting Societies within the Six Europeans States

At present there is no European collecting society since the EU states have not yet harmonised their policies. Therefore, the rules regarding collecting societies, their organisational structures and policies differ from country to country within the EU.

In addition to this lack of harmonisation in terms of copyright law, the control systems on collective management, as well as the operating rules and the legal status and nature of the societies, differ according to each state.

It seems thus necessary to offer an overview of the different collecting societies that exist in the six countries concerned.

- **France**

There are numerous collecting societies, and several of these are in charge of managing the rights and interests of authors regarding sound and audiovisual works:

> SESAM

SESAM is the interlocutor of producers and providers of multimedia content who wish to make use *on the internet* (website, mobile application, video game, digital book, etc) or *via a physical medium* (DVD, CD-ROM, etc) of protected works that are represented by the SESAM.

The SESAM is not a copyright society in itself but it federates a number of collecting societies including the *Society of Dramatic Authors and Composers* (Société des Auteurs Compositeurs Dramatiques - SACD), the *Society of Authors, Composers and Music Publishers* (Société des Auteurs Compositeurs et Editeurs de Musique - SACEM), and the *Civil Society of Multimedia Authors* (*Société Civile des Auteurs Multimédia* - SCAM).
SESAM is thus a society of copyright societies of authors whose works are used in multimedia, and in this way it allows the concerned people to have a single interlocutor.

> *Civil Society of Multimedia Authors* (SCAM)

SCAM is devoted to authors of audiovisual, radio and new media documentary works, in areas such as economics, science or sports. It is a society that manages the economic and moral rights of its members, as well as collecting and distributing their royalties, and defending their professional interests. It also ensures performing and reproduction rights, and negotiates paid contracts with distributors, producers and broadcasters.

> *Society of Dramatic Authors and Composers* (SACD)

SACD concerns authors of dramatic, literary or musical works, as well as adaptations or audiovisual pieces for television, and dramatic films.
This society accepts the registration of pieces of work such as fictional, documentary and other audiovisual works, radio pieces, multimedia works, still image/photography, theatrical plays, choreographies, opera and other live performances, musical compositions, literary and other written works, graphic works, as well as software pieces. SACD's primary mission is to ensure the collective management of copyright by collecting and distributing its members's royalties.

> *Society of Authors, Composers and Music Publishers* (SACEM)

The SACEM concerns authors of musical pieces with or without words, in genres such as rock, jazz, rap, slam, zouk, symphonic music, electronica, electroacoustic, folk, etc; a well as the music of audiovisual works and adverts; sketches and poetry; music documentaries and video clips; dubbing scripts and subtitles for movies or television series; and extracts from dramatic or dramatico-musical works under 20 minutes for television or 25 minutes for radio.
Its main duty is to collect payments of author's rights (*droits d'auteur*) and redistribute them to the original authors, composers and publishers who are members.
SACEM takes action every time a piece from its repertoire database is performed in public (radio, television, live concert, public place, night club, etc) or published on the Internet.

> *Société Civile pour l'exercice des droits des Producteurs Phonographiques* (SCPP)

SCPP concerns the producers of phonograms (sound recordings) and music videos. It collects from users the remuneration due to producers and distributes it to the members.

> *Société Civile des Producteurs de Phonogrammes en France* (SPPF)

SPPF is a non-trading collecting society that concerns independent music labels and producers of phonograms and music videos.
The SPPF manages the broadcast of music videos by audiovisual media services (television channels), in public places, or by web televisions. It also takes care of the diffusion of phonograms on music-on-hold systems (MOH) and web radios.

> *La Société Civile des Producteurs Associés* (SCPA)

SCPA ensures on behalf of the SCPP (*Société Civile des Producteurs Phonographiques*) and the SPPF (*Société des Producteurs de Phonogrammes en France*), the collective management of the rights of producers in the area of music on hold (MOH).
Its mission is to grant authorisation for the public use of protected phonograms in music-on-hold systems in exchange of payment. By subscribing to the SCPA, members allow this society to accord permission to the users of their music. The SCPA is available to any potential user and can give permission to use the work by means of a remuneration predefined by a pay scale.

- **Germany**

There are nine societies for the exploitation of copyright:

> GEMA (*Gesellschaft für musikalische Aufführungs und mechanische Vervielfältigungsrecht)* is a society in charge of the performance and mechanical rights of musical works, and manages the rights of composers, lyricists and music publishers.

> VG Wort manages copyright for authors and publishers of literary works.

> GVL (*Gesellschaft zur Verwertung von Leistungsschutzrechten*), is a collective society dedicated to performance copyright that is qualified to manage secondary rights for performers, phonogram or videogram producers, as well as live entertainment managers.

> VG *Bild-Kunst* manages copyright for visual artists, graphic designers, photographers, architects, as well as directors and other professionals involved in the New German Cinema.

> GÜFA, VFF, VGF et GWFF manage the rights of cinema and television authors regarding the reproduction and secondary use of theirs works.
GÜFA is specialised in erotic and pornographic films. VFF manages copyright for television productions. In the case of film, producers have the choice to select between VG Bild-Kunst, VGF or GWFF. In principle, their affiliation to a certain professional group will determine which collecting society they will choose.

> VG *Musikedition* manages copyright pertaining to music publishing in two areas: musicology and posthumous publications.

In addition, the copyright management societies have created five societies to collect and distribute royalties on their behalf. These collecting societies are civil law entities with no direct relation to the copyright holders. These five societies are:

> ZPÜ (*Zentralstelle für private Überspielung*) was created by GEMA, VG Wort and GVL to collect royalties related to the private copying of audiovisual works.

> ZBT (*Zentralstelle Bibliothekstantieme*) was created by VG Wort, VG Bild-Kunst and GEMA to collect royalties related to library loans.

> ZFS (*Zentralstelle Fotokopieren an Schule*) was created by VG Vort, VG Bild-Kunst and VG Musikedition to collect royalties from schools for making photocopies.

> ZVV (*Zentralstelle Videovermietung*) was created by GEMA, GÜFA, VG Bild-Kunst, GWFF, VGF and VG Wort to collect royalties from video rental shops.

> ZWF (*Zentralstelle für die Wiedergabe von Film- und Fernsehwerken*) was created by VG Bild-Kunst, GWFF and VGF to collect royalties related to the recording of television programs.

● **Belgium**

There is a single copyright management society (SABAM) that manages the rights of all types of artistic works, but there are also societies specialised in particular areas, such as sound and audiovisual works.

> SABAM is the *Belgian Society of Authors, Composers and Publishers*. It collects, distributes and manages all author's rights in Belgium and in other countries where reciprocal agreements have been negotiated. The SABAM is an interdisciplinary collective society that represents a wide variety of artists such as music composers, lyricists, publishers, playwrights, choreographers, film directors, screenwriters, dialogue writers, broadcasters, subtitle writers, translators, novelists, poets, comic book authors, illustrators, journalists, sculptors, painters, video makers, designers, photographers, or graphic artists.

> SOFAM is the only society in Belgium specialising in copyright management for authors in the area of the visual arts, in particular video and multimedia artists as well as camera operators.

> SACD (*Société des Auteurs Compositeurs d'œuvres Dramatiques*) is dedicated to authors of audiovisual works, mostly in the area of live performance, and specialises in theatre, dance, cinema, television and radio fiction, stage music, circus, and street performance. It is a branch of the French SACD which is a multinational collecting society. In addition to collecting and distributing any gains resulting from the exploitation of works and other protected material, it also runs a cultural policy agenda which includes project funding to support artists and promote their work.

> SEMU (*Societé des Éditeurs de Musique*) is aimed at publishers of musical scores.

● **The Netherlands**

There are about ten collecting societies that manage copyright of audio and audiovisual works. The most relevant are:

> BUMA, that manages performing and public broadcasting rights for music composers, lyricists and music publishers.

> STEMRA, that is in charge of managing mechanical rights of musical works. It represents the same categories of right holders as BUMA.

BUMA and STEMRA are distinct juridical persons: BUMA is an association whereas STEMRA is a foundation. However, they work in close collaboration. For example, they publish an annual report together and collect a single membership fee.

> LIRA manages secondary rights of literary, dramatic and dramatico-musical works regarding cable broadcasting, public diffusion, etc.

> *Bladmuziek* protects the rights of composers, songwriters and musicians regarding broadcasting and score reproduction.

> *De Thuiskopie* manages private copying rights since 1991.

> SENA was created to manage the rights of producers and performers regarding the public performance or broadcast of their works.

> VEVAM (*Vereniging tot exploitatie van vertoningsrechten op audiovisueel material*) manages copyright for producers of audiovisual recordings. It collects royalties for the use (publication, broadcast, copy, loan) of protected audiovisual works, and distributes them to the rights holders, the directors of such films and television programs.

● **Finland**

Finland has a single and interdisciplinary collecting society that manages copyright for authors in general:

> KOPIOSTO is a collective copyright management society that represents a broad variety of authors, producers and publishers in the area of radio and television programs as well as musical composition and film.

● **United Kingdom**

These are the main copyright management organisations for audio and audiovisual works:

> PRS (*Performing Rights Society*) was created to manage performing and broadcasting rights for music composers, songwriters and music publishers.

> MCPS (*Mechanical Copyright Protection Society*) manages mechanical rights related to music. This society is owned by the *Music Publishers Association*.

> PPL (*Phonographic Performance Limited*) manages public broadcasting rights for phonogram producers.

> VPL (*Video Performance Limited*) manages public broadcasting rights for videogram producers.

In addition, these organisations have created separate societies to collect and distribute royalties to their members. These collecting societies are not directly related to the rights holders.

> ERA (*Educational Recording Agency*) manages since 1982 on behalf of its members, a licensing scheme for the educational use of broadcast material. ALCS, DACS and MCPS are members of ERA.

1.4.2 Regulatory Authorities for the Circulation of Audiovisual Works

- **France**

> *Conseil Supérieur de l'Audiovisuel* (CSA)

The CSA is the French national agency in charge of all matters related to the audiovisual sector. However it is not a collecting society. It was created under the law of 17 January 1989 with the mission of guaranteeing broadcasting communication freedom in France. The scope of the CSA's responsibilities (under the law of 30 September 1986, amended numerous times) is wide-ranging: ensuring plurality in opinions expressed, organising radio and television electoral campaigns, securing rigorous news treatment, allocating frequencies to operators, making sure that human dignity is upheld, and protecting consumers. The *Conseil* is also in charge of ensuring on-air 'defence and showcasing of French language and culture'.
The role of the CSA is notably to plan the *hertzian* spectrum band for radio and television, draft calls for tenders, review legal agreements with editors of broadcasting services, ensure the balance of speaking time granted to politicians on radio and TV, control programming and verify the origin of audiovisual and cinema works, as well as monitoring the broadcasts of television channels and radio stations.

- **Germany**

The ALM (*Arbeitsgemeinschaft der Landesmedienanstalten*) is an association of fourteen German regulatory authorities. These state authorities are in charge of licensing and controlling, as well as developing, private radio and television in Germany.
As a consequence, private radio and television broadcasts have to comply with the requirements specified by law, under the surveillance of independent regional media authorities acting as an overseeing body of the actual implementation of such requirements.

The ALM gathers together the following authorities:
> BLM (*Bayerische Landeszentrale für neue Medien*) is the regulation authority of Bavaria.

> HAM (*Hamburgische Anstalt für neue Medien*) is the regulation authority of Hamburg

> KEK (D*ie Kommission zur Emittung der Konzentration in Medienbereich*) is the regulation authority in charge of safeguarding pluralism in the media.

> LMS (*Landesmedienanstalt Saarland*) is the regulation authority of the Saarland.

> LFK (*Landesanstalt für Kommunikation Baden-Württemberg*) is the regulation authority of Baden-Württemberg.

> LFM (*Landesanstalt für Rundfunk NordRhein Westphalen*) is the regulation authority of the State of North Rhine-Westphalia.

> BREMA (*Bremische Landesmedienanstalt*) is the regulation authority of Bremen.

> LPR (*Landeszentrale für private Rundfunkveranstalter Rheinland-Pfalz*) is the regulation authority of Rhineland-Palatinate.

> LPR-Hessen (Hessische *Landesanstalt für private Rundfunk) is the regulation authority of Hessen.*

> LRA (*Landesrundfunkausschu für Sachsen-Anhalt*) is the regulation authority of Saxony-Anhalt.

> LRZ (*Landesrundfunkzentrale Mecklenburg-Vorpommern*) is the regulation authority of Mecklemburg-Vorpommern.

> MABB (*Medienanstalt Berlin-Brandenburg*) is the regulation authority of Berlin-Brandenburg.

> NLM (*Niedersächsische Landesmedienanstalt für privaten Rundfunk*) is the regulation authority of Lower Saxony.

> SLM (*Sächsische Landsanstalt*) is the regulation authority of Saxony.

> TLM (*Thüringer Landesmedienanstalt*) is the regulation authority of Thuringia.

> ULR (*Unabhängige Landesanstalt für Rundfunk*) is the regulation authority of Schleswig-Holstein.

> KJM (*Kommision für Jugendmedienschutz des Landesmedienanstalten*) is the German commission for the protection of youth.

- **Belgium**

Belgium has two regulation authorities:
> CSA (*Conseil Supérieur de l'Audiovisuel de la communauté française de Belgique*) is a regulatory authority similar to the French CSA and with same duties.

> VCM (*Vlaams Commissariaat voor de Media*) is the Flemish regulator for the media.

- **The Netherlands**

In the Netherlands there is only a single competent authority:
> The CDV (*Commissariat voor de Media*) is the Dutch media authority that ensures the respect of national laws in the media. It secures media independence, pluralism, and public access to media offer. To achieve this, the commission runs a large variety of monitoring tools and can also impose penalties such as fines.

- **Finland**

Finland has two competent authorities:
> TAC (*Telecommunications Administration Centre*)

> FICORA (*Finnish Communications Regulatory Authority*) is responsible for the provision of communications services. It ensures that new and innovative service providers can enter the national market. The commission also makes sure that consumers's rights are not compromised.

- **United Kingdom**

The United Kingdom has a single regulatory authority for audiovisual works:
> OFCOM (*Office for Communications*) is the independent regulator and competition authority for the UK communications industries. This authority regulates in particular the broadcasting sector,

protecting consumers against improper conduct of operators as well as informing them of their rights.

2. EUROPEAN AND INTERNATIONAL CONVENTIONS:

Beyond national law, there has been a quest for copyright harmonisation at both international and European levels. This resulted in the creation of a number of conventions, of which the most important in terms of international law is the *Berne Convention*, which led to the elaboration of several directives at European level, mainly within the European Union.

2.1 International Conventions: The Bern Convention

The *Berne Convention* is an international convention established in 1886 and run by the *World Intellectual Property Organisation* (WIPO). Its mission is to set the basis for an international standard of copyright and impose a minimum protection to the signatory states. These can, on their turn, provide a more protective legislation in terms of domestic law.
The Convention notably allows that a foreign author may invoke the legislation applicable in the country where the work is presented, and enjoy the same rights as national authors. Conversely, the author, or the rights holder, can also choose to have the minimum protection that is provided by this convention, in case they think it is more advantageous.

The Bern Convention, under *article 3,* acknowledges protection for all authors who are nationals of one of the countries of the European Union, whether their works are published or not, and provides as well protection for authors who are not nationals of those countries but who have their habitual residence in one of them. Moreover, *Article 4* states that even if the conditions specified in Article 3 are not fulfilled, the protection granted by this convention shall apply to the authors of cinematographic works if the maker/producer has his/her head office or habitual residence in one of the EU countries.

The Convention also recognises copyright protection to musical compositions, with or without words, and to cinematographic works, to which are assimilated works expressed by a process analogous to cinematography. Therefore, sound and audiovisual works are protected by copyright.

2.2 European Law

2.2.1 Directive 2010/13/EU also referred as *Audiovisual Media Services Directive*

This directive aims at providing a regulatory framework for audiovisual media services across frontiers to ensure a transition to a common programme production and distribution market.
The purpose is to regulate all audiovisual media services in charge of public information, entertainment, or education, including traditional services such as television, and emerging on-demand video services.
Service providers are only subject to the regulations of their own country. This restriction is essential to prevent any Member State from impeding broadcasting from audiovisual media services coming from other Member States.

Nevertheless, under this directive, EU countries are allowed to restrict the broadcasting of inappropriate audiovisual content that would not be banned in the country of origin.
In this way, Member States can limit the broadcasting of programmes involving violence or pornography that could offend the sensibility of minors. They may also take measures against any programmes that could put public order, health and security, or consumers protection at risk.
This directive also permits that a Member State objecting to the content of a broadcast coming from another Member State, may notify the broadcaster in writing to warn about any infringements and request compliance with the regulations. If consultations fail, the objecting State can take restricting measures with the prior agreement of the European Commission.

Due to the prevailing internal laws, the implementation of this directive varies from country to country. Therefore, the application of the directive should be taken into account separately for all the six countries related to this project.

2.2.2 *European Convention on Transfrontier Television* opened on 5 May 1989 - 'Television without Frontiers'

This Convention is concerned with programme services that are incorporated in transmissions. Its purpose is to facilitate cross-border transmission and retransmission of television programme services among Member States. This applies to any programme service transmitted or retransmitted by entities or by technical means within the jurisdiction of a Member State, whether by cable, terrestrial transmitter or satellite, and which can be received, directly or indirectly, in one or more of the other States.

2.3 International Audiovisual Regulation Institutions

2.3.1 *European Platform of Regulatory Authorities* - EPRA

The European Platform of Regulatory Authorities, also called EPRA, is a discussion platform on a wide variety of topics that are relevant to the regulators of the audiovisual media sector. It gathers all types of audiovisual media, in particular radio broadcasting and cinema.

This platform brings together 52 European regulatory authorities. With the cooperation of the European Commission and the Council of Europe, its aim is to improve media regulation by adapting to new forms of communication and more specifically to digital media.

The EPRA provides a forum for informal discussion between regulatory authorities in the broadcasting field, and allows the exchange of information about common issues regarding national and European regulation. It is also a space for discussing practical solutions to legal problems related to the interpretation and application of broadcasting regulation.
However, and despite its dynamic and pioneering nature, The EPRA remains an informal discussion forum that cannot be used to take political decisions and to exert pressure on national institutions.

2.3.2 *Mediterranean Network of Regulatory Authorities* - MNRA

The Mediterranean Network of Regulatory Authorities Network (MNRA) was created in order to strengthen the existing historical and cultural links between Mediterranean countries, and to give

the opportunity to the independent regulatory authorities from the Mediterranean area to discuss about the common challenges they have to face.
In the manner of EPRA, this network constitutes a platform for discussion, consistent exchange of information and research on topics related to audiovisual regulation. It has put in place a plan of fundamental principles for the regulation of audiovisual contents, and acts in favour of freedom and transparency of communication in the Mediterranean area.
This Network represents twenty states from the Mediterranean Basin, including France, and has 24 member institutions.
One of its key achievements is the adoption of the declaration on the regulation of audiovisual contents. This declaration establishes a foundation of common principles regarding audiovisual content, and engages the 24 Mediterranean authorities in making the programme providers aware of such principles. This is based on the respect for values, principles, and fundamental rights shared by the members of the network, such as the respect for human dignity, and the respect for the plurality of views and expression.
Pursuing this same goal of audiovisual regulation, MNRA adopted another declaration of intention related to the protection of young publics and the fight against violence in the media.

2.3.3 French-speaking Countries Network of Media Regulation Authorities - REFRAM

The REFRAM is a network of media regulation authorities from French-speaking countries. It gathers 29 regulation authorities from 27 states that are members of the network.
The goal of this network is to develop or reinforce exchanges between members. It forms a space for debate and exchange of information regarding matters that concern these authorities as a whole. In this way, the REFRAM is entitled to carry out any necessary action to achieve its objectives, including the organisation of workshops about media regulation.
Like so, on the 14th and 15th of October 2013, the REFRAM held a conference on how the governance of media regulatory bodies could face the challenge of democracy and the digital transition. On this occasion, members of the network adopted a roadmap on three fronts: public media services; protection of minors and complaint handling processes; and paying special attention to projects regarding political pluralism and gender equality in the media.

2.3.4 IN PROSPECT: The Meeting of Regulatory Authorities from six EU countries on the 20th of September 2013 and the decision to undertake a co-ordinated action within the 28 EU states

On the 20th of September 2013, a foreshadowing meeting was held at the French *Conseil Supérieur de l'Audiovisuel* (CSA) between German, Italian, Dutch, Polish, British and Swedish audiovisual regulation authorities in order to engage in a coordinated action with all 28 EU Member States.

The objective of such meeting was to deepen the harmonisation of the European regulation, yet allowing considerable flexibility to the Member States.
The current lack of harmonisation raises issues concerning which legislation to apply, in particular since more and more audiovisual service providers have to comply with national legal requirements of the country in which they are based, while aiming at broadcasting to other countries that might have a different legislation.

This meeting triggered a process for the revision of directives by European instances such as the Council of European Ministers. In this regard, many initiatives from European parliamentarians

allowed the elaboration of resolutions, in particular in what concerns media freedom or the online distribution of audiovisual works. It is now up to the European Commission to move ahead with these initiatives and to the European Council to implement practical policy decisions.

3. BEYOND LAW: CURRENT PRACTICES REGARDING SOUND AND AUDIOVISUAL WORKS AT NATIONAL AND EUROPEAN LEVEL

3.1 Practice in the Member States: Examples

- **France**

Despite having a hugely protective legislation in terms of author's rights, it is clear that the free circulation of works on the Internet could not be effectively stopped by the implementation of control policies. The application of the highly disputed HADOPI Law was clearly insufficient.

The preservation of works through digitalisation, and the resulting dissemination, raises insolvable issues to the legal practitioners who would like to make a strict application of the provisions in force.

Finally, the authors's associations tend to follow in a passive way the practical and technological evolution behind the creation and circulation of artistic works, mixing cross-disciplinarity and cutting-edge technology without really taking action.

- **Germany**

There is a severe repression on any violations of copyright leading to plenty of convictions, especially of Internet users who illegally download protected works.

In fact, unlike the relatively inefficient French HADOPI Agency, the equivalent authority in Germany does not hesitate in delivering severe penalties to those who illegally download audio and cinematographic works.

- **The Netherlands**

Dutch copyright law is highly protective of the authors's rights. In fact, certain copyright infringements such as piracy are considered to be criminal offences under the copyright act of 23 September 1912. Penalties can be quite severe, with mandatory sentences of imprisonment of up to 10 years or more.

- **Finland**

In Finland, copyright law is also relatively strict, in particular against internet users who make illegal download of audio and cinematographic works.

In January 2013, the people concerned launched a campaign to review the legislation, with the purpose of easing criminal sanctions and broadening the scope of the trade of cultural goods over the Internet.

The required 50,000 signatures were collected before July. Finnish parliamentarians discussed about a relaxation of the legislation and voted in favour of a draft proposal named 'The Common Sense in Copyright Act'. This act decriminalises file sharing and will put an end to police searches and online monitoring of alleged offenders.

In addition, the leaders of this grassroots movement for the relaxation of copyright law have been working closely with the main European and international protagonists in terms of digital rights. The aim is to gather political support to alter the foreign policy on online copyright in view of a smoother exchange of cultural goods on the Internet.

3.2 IN PROSPECT: At European Community Level

The EU wants to establish by 2015 a digital single market to face the common challenges of illegal Internet downloading across Europe, especially regarding musical and audiovisual works.
The aim is to examine the conditions under which the European copyright regime could ensure a high level of protection to authors while facilitating the online access to creative works.

The European Commission already recommended rules against online piracy and counterfeiting but a political dynamic is required to implement it.

Valérie Dor, 2014
(translated by Maria Castro)