

# THE MORAL RIGHTS OF PERFORMERS

## The current situation 2013

**FIA**   
INTERNATIONAL FEDERATION OF ACTORS



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# Introduction

The need for a study of the moral rights of performers and more specifically of dubbing artists has come out of two events: the passage of a resolution to that effect at the 20<sup>th</sup> Congress of the International Federation of Actors (FIA) in Toronto, and the conclusion in June 2012 of the World Intellectual Property Organization (WIPO) Beijing Treaty on Audiovisual Performances. These two events have highlighted i) the practical problems faced by performers in this field and ii) the possibility of improvement in the form of international legislation protecting the moral interests of performers working in the audiovisual field.

The International Federation of Actors (FIA), a non-governmental organization representing the unions, guilds and associations of performers around the world, voices the interests and

professional concerns of actors, dancers, singers, broadcast professionals, circus artists, variety artists and others, with the exception of musicians and visual artists. Its aim here is to make an inventory of current legislation and practices concerning the moral rights of performers at the international level. The organization drew on the support of its members, with their local knowledge, in order to develop a comprehensive picture of the current situation in the field. A significant number of FIA member organizations kindly contributed to the writing of this study by sharing information and advice.

We shall present first of all the concepts and legislation - mostly international - on moral rights. We shall then analyse, in a second stage, the results of the survey conducted by FIA, which was specifically directed at the rights of dubbing artists.

# Presentation

To understand what the moral rights of performers are, we must first turn our attention to the rights on which they are based, namely the moral rights of authors.

## The moral rights of authors

The author, as the creator of an original literary or artistic work, acquires through his work and his talent, a series of rights that allow him to retain control of his work and be remunerated for it. The protection accorded to the author consists of two types of rights: economic rights, that guarantee an income on the one hand, and moral rights on the other. This study focuses on moral rights which, although less recognized than economic rights, are essential to authors - and to performers benefiting from “neighbouring” intellectual property protection. These rights are fundamental in ensuring respect of the author’s work and person. They derive from the civil law concept of intellectual property, which sees a work as the emanation of its creator, simply the expression of his personality.

The international recognition of the moral rights of authors is based on Article 6bis of the Berne Convention of 1971. This

guarantees foreign authors whose works are distributed in countries that are parties to the Convention “*the right to claim authorship of the work*” and “*to object to any distortion, mutilation or other modification of, or any derogatory action in relation to the said work which would be prejudicial to his honour or reputation.*” This is a minimum treatment that does not prevent states from guaranteeing additional privileges to those concerned. Thus, while international law mentions only two, the moral rights of authors at national level are more generally composed of four prerogatives: the right of authorship, the right to the integrity of the work, the right of dissemination, and the right of withdrawal.<sup>1</sup> The right of authorship (or attribution) is the right of the author to see his name appear (or not) on his work or on elements used to advertise it. The right to integrity or respect of the work allows the author to oppose any correction or modification of his work that would be prejudicial to him. This means that the form or spirit of the work may not be modified without its author’s consent. The right of dissemination recognizes the author’s sole right to decide whether, when, and in what form the work will be made available to the public. Finally,

<sup>1</sup> M. Muller, *Les droits d’auteur*, République française: avis et rapports du Conseil Economique et Social 2004

the last prerogative traditionally guarantees authors the right of withdrawal. This allows the author, at his discretion, to withdraw the publication of his work and stop its exploitation, possibly subject to the payment of compensation.

## Performers and moral rights

Recognition of the intellectual property rights of performers at national and international level is a relatively recent phenomenon. These persons, whom international law defines as “actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary or artistic works<sup>2</sup> or expressions of folklore<sup>3</sup>” enjoy rights that are distinct from traditional authors’ rights. The fact is that performers, although they may be considered creators in the wider sense of the term, are in most cases not the source of the work that they interpret. Thus, in the same way as phonogram producers and broadcasting organizations, they enjoy rights that are “neighbouring” or “related” to those of authors. The moral rights of performers are one of the prerogatives provided by neighbouring rights.

The moral rights of performers emerged much later than those of authors, only with the development of technologies for recording and broadcasting their performances to the public. The challenge is

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<sup>2</sup>Article 3 a) of the International Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention).

<sup>3</sup>Article 2 of the WIPO Performances and Phonograms Treaty (WPPT).



all the more important today as the digital environment has profoundly changed the dissemination of works and performances, challenging the copyright system as it has existed until now.

Just as for authors, moral rights are particularly important for performing artists, securing their honour and

reputation and protecting their performances against prejudicial exploitation.

The present study focuses on the prerogatives granted to audiovisual performers in terms of moral rights and their implementation in practice. Special attention will be given to dubbing artists.

## The situation of dubbing artists

The particular interest of the International Federation of Actors in the moral rights of dubbing artists follows on from Resolution No. 16 of the organization's 20th Congress in Toronto. In it FIA made a commitment *"To conduct an international survey seeking to elucidate how extensively the moral rights of dubbing artists are implemented and collect information on national business practices regarding, in particular, the exercise of the right of such performers to be clearly identified as authors of their works."*

This resolution stems from a motion presented by Színházi Dolgozók Szakszervezete (SDS), the Hungarian trade union affiliated to FIA, on account of the fact that the moral rights of dubbing artists in Hungary are regularly ignored, especially the right to be identified as the performer of the work on copies of audiovisual recordings made available to the public for commercial purposes. This observation, as well the feeling shared by many members of FIA that the Hungarian situation is a far from isolated case, forms the basis for this survey, which to our knowledge is the first of its kind.

Dubbing is a singular activity in many ways. While it may be considered as one of the several possible occupations of performing artists, for some it may be their main activity. Dubbing, a technique generally consisting of replacing the original language in which an audiovisual work was shot with another language in order to facilitate its dissemination abroad, is to be distinguished

from post synchronization, which consists of the re-recording of the voices by the original actors in the studio for artistic or technical reasons. The dubbing artist therefore has only his voice to interpret and convey the emotions of a character that the original actor has already defined by his performance.

Dubbing is significant both in terms of quantity and quality. The widespread use of this technique is evidenced by the fact that only four of the twenty-five countries surveyed reported never using it.<sup>4</sup> Whilst countries like Japan, Germany and Italy use it systematically, the majority of countries responding to the FIA survey have very frequent recourse to this technique. A limited number of them, including the Scandinavian countries, seem to use dubbing on a more limited basis, in particular for children's films and animation.

But dubbing is also, and above all, a way to enable works to travel and to make them accessible to the greatest number. As such it represents a vehicle for cultural diversity. The opening of borders and the rapidly multiplying number of exchanges at global level has had a particularly dramatic effect on cultural production. One of the most convincing examples in this respect is probably the very large-scale dissemination of American television series. These series, and all other audiovisual works broadcast outside their borders, are in many cases dependent on talented dubbing artists lending their voices to the main characters.

<sup>4</sup> Cameroon, Ecuador, Romania and Serbia.





## Challenges and limitations of the study

This study is intended to take stock of legislation and practice regarding the moral rights of performers and more specifically of dubbing artists. The international survey, which was conducted among 30 unions, guilds and professional associations of performers, allowed FIA to gather first-hand information on current practices and the implementation of the moral rights of performing artists.

However, a number of inherent limitations to the FIA survey should be pointed out. The present study, and particularly the survey on which it is based, make no claim to be exhaustive. Thus, the relatively large number of responses does not cover all national situations. It should also be noted that some information was simply not available. The innovative focus of this study specifically on the moral rights of dubbing artists made the search for relevant information on the subject much more complex. In addition, a limited

but tangible portion of the responses to the questionnaire turned out to be contradictory, and even inaccurate - calling for additional research, which did not always give a definitive answer. Finally, it is true that the work mainly focused on developed or emerging countries to the detriment of developing countries. Certainly these elements have an impact on the relevance of the study. But nevertheless, given its innovative focus, it may be of real use.

The FIA survey consisted of an online questionnaire with a variable format. This

meant that, according to the responses selected, the number of questions asked could vary between fourteen and twenty-nine. Thirty organizations representing twenty-five countries completed the questionnaire. These organizations, most of them FIA members, come from various countries around the world, albeit with an over-representation of European countries. It is interesting to note that of the twenty-five countries who contributed, eighteen have ratified the WIPO Performances and Phonograms Treaty (WPPT).

# Legal framework of the moral rights of performers





When Michelangelo noticed that one of his statues had been wrongly attributed to his boss and decided to secretly carve his name on it, he was one of the first persons in history to claim the right of attribution<sup>5</sup>.

From ancient Greece to Renaissance Italy and 19th century France, the moral rights of artists are a European tradition. The first legal recognition of moral rights dates back to the decision of the civil court of the Seine in 1814, which states

that “a book sold by an author to a printer or bookseller, and which must bear his name, must be printed in the state in which it was sold and delivered”.<sup>6</sup> During the course of the 19th century, the French courts would recognize one by one the moral rights of authors.

The legislative framework governing moral rights must be considered at three levels: international, European and national.

## International treaties

The World Intellectual Property Organization (WIPO) has become the ultimate forum for negotiation of multinational agreements on intellectual property. This specialized agency of the United Nations was established in 1967 and is responsible for promoting innovation and creativity aimed at the economic, social and cultural development of all countries through a balanced and effective international intellectual property system. It is with the goal of completing this international system that new treaties are negotiated.

### § 1. The Rome Convention for the Protection of Performers, Producers

### of Phonograms and Broadcasting Organizations (1961)

The first international treaty recognizing, inter alia, the intellectual property rights of performers is the Rome Convention of 1961 on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. This treaty provides performers with the right to oppose certain forms of exploitation which they have not previously authorised: the broadcasting or communication to the public of their performance, its fixation on a physical medium, the reproduction of a fixation where originally made without their consent or where the reproduction is undertaken for purposes other than those

<sup>5</sup> R. C. Bird & L. M. Ponte, *Protecting moral rights in the United States and the United Kingdom: challenges and opportunities under the U.K.'s new performances regulations*, Boston University International Law Journal, Vol. 24:213, 2006.

<sup>6</sup> F. Fouilland, *Le droit moral de l'auteur en droit français*, Université Jean Moulin – Lyon III, 2003.

for which they gave their consent. This protection was then guaranteed to them for a minimum of twenty years.

Although an encouraging start, it has to be observed that the Rome Convention offered only limited protection, especially since once the artist had permitted the audiovisual recording of his performance, he no longer enjoyed any rights regarding its subsequent use. Moreover, no moral rights were granted, nor was the exclusive right to authorize certain uses of his performance. Another thirty years had to pass for protection specifically directed at moral rights to be granted, at least as regards audio performances.

## § 2. The WIPO Performances and Phonograms Treaty (WPPT, 1996)

In the 1990s, WIPO turned its attention to the revolutionary changes caused by the advent of the Internet and the development of digital technologies. The digitization of content; innovative access and distribution mechanisms; as well as the greater ease of copying and manipulation of protected content forced the organization to adapt. Thus, WIPO set out to modernize authors' and neighbouring rights in what had become a global industry. Unfortunately for artists, negotiations were successfully concluded only with respect to their audio performances.

In 1996, the WIPO Performances and Phonograms Treaty (WPPT) was adopted. The Treaty guarantees artists and producers of phonograms stronger rights than those given by the Rome Convention with respect to their audio performances. The WPPT treaty mainly grants the exclusive rights of reproduction, distribution, rental and making available on demand. It also enshrines the right to equitable remuneration for broadcasting and communication to the public.

Article 5 of the WPPT is particularly important as it contains the first international recognition of the moral rights of performers. More specifically it states that:

*1. Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.*

*2. The rights granted to a performer in accordance with the previous paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or*





*institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.*

The WPPT thus secures the international recognition of the right of paternity as well the right of integrity, allowing performers to oppose changes in their audio performances that may damage their reputation. The second paragraph of the article states that this protection shall be granted to performers for a period at least equivalent to their economic rights. It may be noted that, contrary to what we will see in the Beijing Treaty, there is no agreed statement limiting the scope of this article. The only limitations that the WPPT makes to the moral rights of artists are those set out in Article 5 related to “the manner of use of the performance” (right of authorship) and the need to bring evidence of a possible prejudice to the right owner’s reputation (right of integrity). Finally, the WPPT does not pronounce on the non-transferability of moral rights, going no further than emphasizing their “independence” from economic rights. Thus, if the right of paternity cannot conceivably be transferred, national legislation may

dispose that the artist can contractually waive the exercise of this right. Similarly, some also argue that the exercise of the right of integrity may be waived or even transferred contractually.

### § 3. The Beijing Treaty on Audiovisual Performances (2012).

The conclusion of a treaty recognizing the economic and moral rights of audiovisual performers proved a more complex task. It took two failed attempts in 1996 and 2000 and more than 15 years of negotiations before WIPO finally saw the approval in 2012 of the long-awaited Beijing Treaty on Audiovisual Performances. The treaty, which will enter into force only after ratification or accession by at least 30 countries, fully integrates audiovisual performers into the international copyright system.

With some exceptions, the Beijing Treaty comes very close to the WPPT as regards the rights it grants to performers. It bestows the economic rights of reproduction, distribution, rental, making available on demand and the right of broadcasting and communication to the public, but also moral rights. Article 5 of the Treaty gives its tenor:

*1. Independently of a performer’s economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in*

*audiovisual fixations, have the right:*

*i) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and*  
*ii) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audiovisual fixations.*

*2. The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.*

Article 5 therefore confirms, as did the WPPT for audio performers, the right of paternity and the right to the integrity of the work for performers in the audiovisual sector.

However, there is an agreed statement accompanying Article 5 of the Beijing

Treaty that severely limits the application of the right of integrity. The statement reads:

*For the purposes of this Treaty and without prejudice to any other treaty, it is understood that, considering the nature of audiovisual fixations and their production and distribution, modifications of a performance that are made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats, and that are made in the course of a use authorized by the performer, would not in themselves amount to modifications within the meaning of Article 5(1)(ii). Rights under Article 5(1)(ii) are concerned only with changes that are objectively prejudicial to the performer's reputation in a substantial way. It is also understood that the mere use of new or changed technology or media, as such, does not amount to modification within the meaning of Article 5(1)(ii).*

This means that while the WPPT gave a musician the right to oppose any change in his performance that may prejudice his reputation, the Beijing Treaty limits the application of this right by a series of exceptions related to the “normal course of exploitation” of the audiovisual performance. The list of authorized modifications, which is intended to be non-exhaustive, includes editing,

compression, dubbing and formatting – where they can be considered part of a “normal course of exploitation” of the performance and are made in the course of a “use authorized by the performer”. Proof of this authorization, in the absence of formal requisites, can be provided by any means. Moreover, the Treaty of Beijing stands apart from previous international legal tradition in this area by requiring the prejudice to be “objective” and “substantial”. It is therefore legitimate to conclude that the Beijing Treaty grants artists fewer moral rights with regard to their audiovisual performances, exception made of the right of paternity – though this too may be limited by the way the performance is used or may be waived, as some will argue, in the absence of a contrary provision in the Treaty.

It is thus reasonable to enquire whether the moral rights of dubbing artists are governed by:

- the WPPT, in force since 2002, providing a more comprehensive protection, or
- the Beijing Treaty, which has not yet reached the threshold of 30 ratifications for its entry into force and which grants a more limited protection.

To our knowledge, no jurisprudence has yet decided on this issue. However, it seems possible to suggest that dubbing,

while per se a purely audio performance, cannot be artificially separated from the audiovisual work for which it is done, its sole purpose being to facilitate the understanding of this work by the public when the work is distributed abroad. Dubbing seems therefore to be more closely related to the original soundtrack of an audiovisual work, which is an integral part of the latter, than to a phonogram.

Another relevant question is to know what effect the agreed statement associated with Article 5 of the Beijing Treaty might have on legislation that already recognizes moral rights (paternity and integrity) to national audiovisual performances, following the ratification of the treaty by these countries. It is reasonable to expect that, while not necessarily requiring a change in the current wording of this right, the agreed statement could play a significant role in its implementation in practice.

Finally, it is interesting to note that whereas in Article 6 bis of the Berne Convention, and in almost all national legislation protecting the moral rights of performers, the right to integrity protects the reputation and honour of the creator, the WPPT and the Beijing Treaty solely mention the reputation of the artist.

## European legislation

There is no European Union legislation covering the moral rights of artists. Indeed, the European legislator, when regulating economic rights, has left this side of copyright to the Member States.<sup>7</sup>

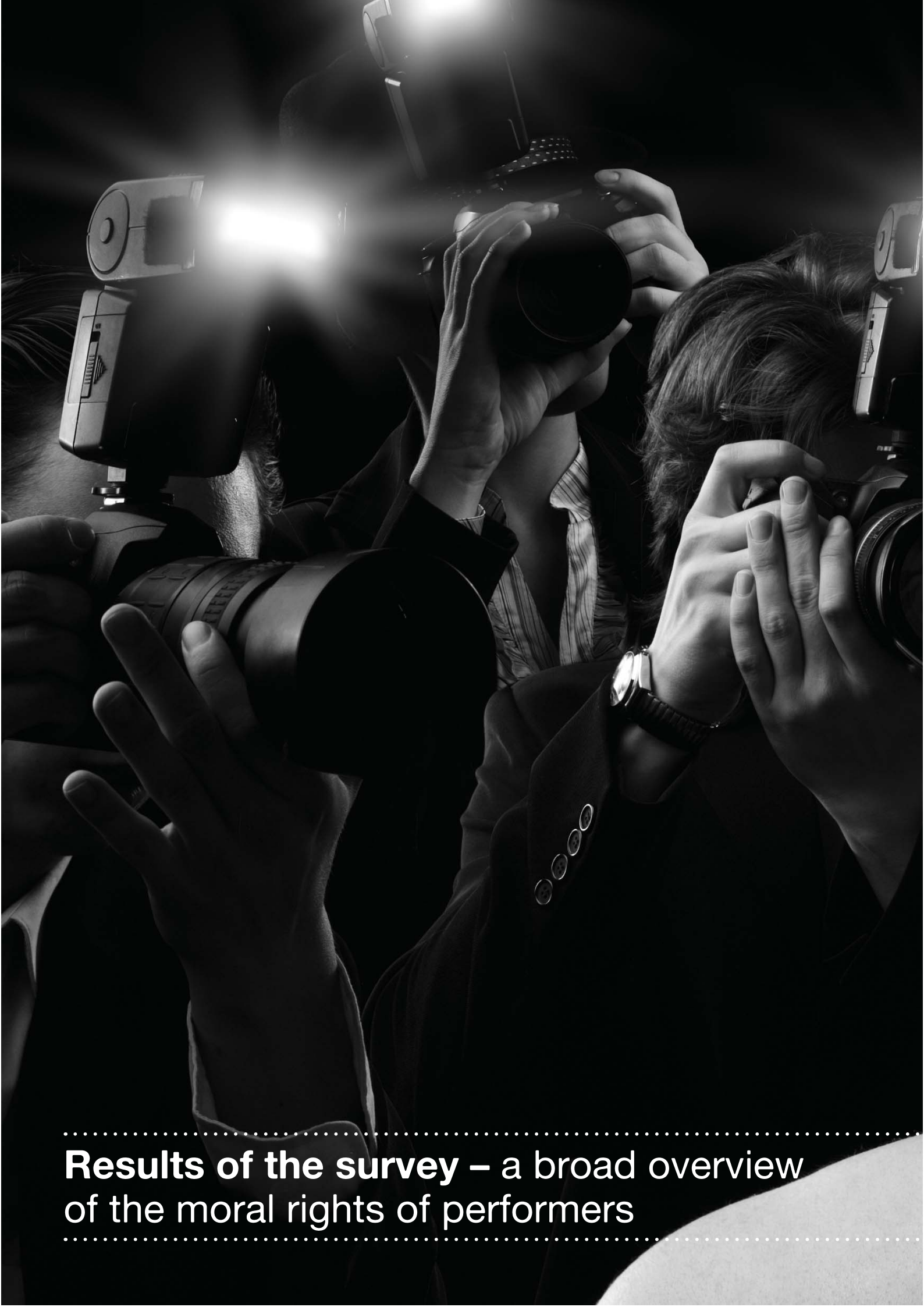
## National legislation

Many countries grant performers moral rights, both as a result of international conventions to which they have become parties and on their own initiative. Of the 25 countries responding to this survey, 23 grant these rights - although to different

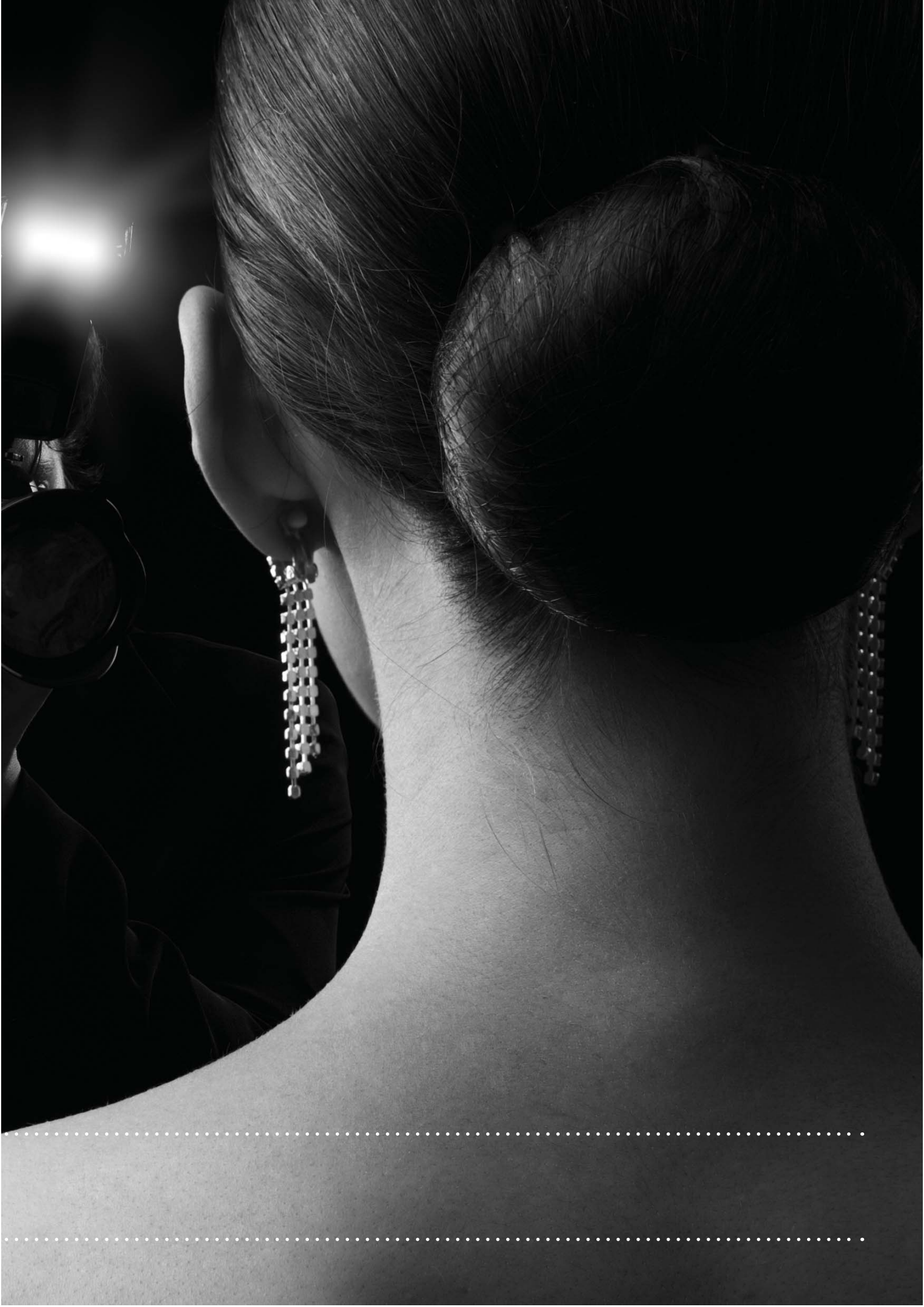
<sup>7</sup> B. Navarre, *Législation communautaire et droits des artistes interprètes*, Dissertation, Université Libre de Bruxelles, 2009.

degrees - and, for the most part, without discriminating between audiovisual or audio performances. It should be remembered that international treaties set out minimum rights and that national laws often provide a broader protection.

It is impossible to review here the national legislation of each country. For this reason we shall attempt below to establish links and categories of countries that act similarly on the moral rights of performers. Despite the fact that situations are very diverse, certain trends can nonetheless be defined.



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**Results of the survey – a broad overview  
of the moral rights of performers**  
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Moral rights are not consistently recognized across the world. Whilst some countries offer very broad protection to performers, others practically ignore the very concept of moral rights. Nevertheless, we shall see that theory and practice frequently differ and that it is possible for moral claims to be addressed in countries that do not recognize these rights per se while, conversely, other countries have laws acknowledging the moral rights of audiovisual performers but not enforcing them.

## Legal recognition of the moral rights of performers

With the international recognition of the moral rights of artists with respect to their audiovisual performances by the Beijing Treaty, albeit with the significant restrictions that we have outlined, what about their recognition in national law? As the treaty has not yet entered into force, there is no guarantee that they will be recognized at national level. Consideration of the state of play in various parts of the world highlights that, indeed, not all countries recognize performers as having these rights. Some of them, in the absence of international obligations, reserve such recognition exclusively for audio performances.

### § 1. Inconsistent recognition of the moral rights of performers the Common Law and Civil Law countries

The legal recognition of the moral rights of performers, while widespread, is not systematic. There is a traditional tension between Common Law countries, including the United States and the United Kingdom, and Civil Law countries, which include almost all of Europe. Among the twenty-five countries that responded to the questionnaire only two have no legislation granting artists moral rights, regardless of the audio or audiovisual nature of their performances. As it happens, both these countries, i.e. the United States and Nigeria, are Common law countries.

Common law and Civil law, which have produced the concepts of copyright and authors' rights respectively, are based on different concepts. And thus, although copyright is often translated into French as 'droit d'auteur' (author's rights) and vice versa, these two terms do not in fact overlap completely.

Thus, if the European concept, which might be considered a Romantic one, attaches great importance to moral rights, it is because it considers the artistic work an emanation of the author's personality. The work is the embodiment of the personality of the creator, of his "creative soul".<sup>8</sup> In contrast, Common law systems view the artistic work as a tangible asset which belongs to the creator. It not an embodiment of the creator's personality, but simply an asset that he owns and

<sup>8</sup> R. C. Bind & L. M. Porte, *Protecting moral rights in the United States and the United Kingdom: challenges and opportunities under the UK's new performances regulations*, Boston University International Law Journal, Vol. 24:213, 2006.



which, like any other asset, can be traded. Copyright is clearly an economic concept. The artist, as the owner of his work, a cultural asset, is free to sell it. In addition, copyright is more oriented towards the interests of the investor than those of the creator. Whoever takes the economic risk, which is not always the creator, is better protected than the author.

That said, over the years and under the influence of international law, moral rights have spread beyond the borders of civil law countries. One by one, Canada, Australia, New Zealand and more recently the UK, have introduced legislation that acknowledges the moral rights of authors and performers.<sup>9</sup> For example, since 2006, British performers have the right to be identified as performers and to oppose any misuse of their sound performances.<sup>10</sup>

## § 2. The United States: a special attitude towards moral rights

Amidst recognition of moral rights around the world, it is worth mentioning the rather exceptional case of the United States.

Contrary to other Common law countries, and with the exception of the Visual Artists Rights Act (VARA), addressing the moral claims of visual artists; the US legal system is yet to acknowledge moral rights. One

might even consider that there is certain rejection of the concept.

The United States upholds the view that moral rights are incompatible with its legal system, and consistently refused to sign international instruments relating to moral rights. For example, the United States only ratified the Berne Convention in 1989 and has refused since to transpose Article 6 *bis* on moral rights on the grounds that its current domestic legislation - including the regulation against unfair competition - guarantees the essence of those rights.<sup>11</sup> In fact, the US ran no great risk in ratifying the Berne Convention given that it is impossible for an author to invoke that treaty directly in court. One can imagine that if the Agreement on Trade related Aspects of Intellectual Property Rights (TRIPS) had included Article 6 *bis* of the Berne Convention, the problem might have been different, in that an appeal to the Dispute Settlement Body (DSB) of the World Trade Organization (WTO) would have been possible. The United States also ratified the WPPT in 1999 but the *U.S. Digital Millennium Copyright Act* of 1998 implementing this treaty makes no reference at any time to moral rights. That said, we will see later that moral claims can be brought in another form on the other side of the Atlantic.

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<sup>9</sup> *Ibid.*

<sup>10</sup> N°18 Copyright Rights in Performances, The Performances (Moral Rights, etc.) Regulations 2006, Laid before Parliament on 11th January 2006.

<sup>11</sup> L.A.Pettenati, *Moral rights of artists in an international marketplace*, Pace international law review, 2000.

One can distinguish two categories of moral rights granted to performers: i) fundamental rights generally provided by national laws and inspired by minimum international standards and ii) additional rights granted more exceptionally in some countries.

### § 1. Two fundamental rights

The two primary moral rights, the right of paternity and the right to the integrity of the work, are also granted by the Beijing Treaty. Among the 23 countries that completed the FIA questionnaire and that legally recognize the moral rights of artists with respect to their audiovisual performances, 22 guarantee the right of paternity and 19 the right to the integrity of the work.

#### The right of paternity

The right of paternity is the essence of the moral rights of performers. It entails the right of the performer to be identified whenever his/her work is made available in any way. The performer must be named but can also request not to be named (the right to anonymity), or to appear under a pseudonym. The right of paternity also includes, in a regular but non-systematic way, the right to object to an inaccurate attribution of the work.

It is interesting to note that in Slovakia and in Italy the right to be named is only granted to performers playing principle roles. In all other cases, the benefit of this right can only be achieved by negotiation (collective or individual). Since the law does not define the scope of the artist's role, the right of paternity is in practice acknowledged to any performer who also holds an economic right. In Italy, any artist can in principle avail himself of the Civil Code to object to another person's artistic performance being falsely attributed to him, or his performance being attributed to a third party. On the other hand, the Italian law explicitly guarantees the right of paternity as regards any fixation of the artistic performance.

#### The right to the integrity of the work

The right to the integrity of the work is the right of the performer to oppose modifications that can be detrimental to his reputation or honour. It should be emphasized that the importance of this right is often reduced in practice by the fact that its holder must bring a case to court and provide evidence of the prejudice he suffered. In addition, as explained later in this presentation, the exercise of this right is often restricted by law and by contractual practices allowing it to be waived. In some cases, the right to integrity appears to be limited by the fact that, in the event of prejudicial alterations, the performer can



**PROD. NO.**

**SCENE**

**TAKE**

**ROLL**

**DATE**

**SOUND**

**PROD. CO.**

**DIRECTOR**

**CAMERAMAN**

only ask that his name be omitted, or that it be clearly stated that these modifications are unrelated to the original performance.

## § 2. Other less frequent rights

In addition to these rights, which are almost systematically guaranteed and protected by national laws, a few additional moral rights are granted to performers in certain countries only. In most cases, these are rights usually meant for authors, which are extended *mutatis mutandis* to performers. More than half the countries responding to the questionnaire grant additional moral rights to performers.

### The right of modification

The right of modification allows the author and, by extension the performer, to demand the adjustment of his published work. Although many responses reported the existence of such a right in national legislation, we could only verify its existence in Colombia, where the law provides that this right is not transferable and cannot be waived. However, its importance for audiovisual performers seems to be essentially symbolic, especially as the law provides that this right can only be exercised subject to prior payment of any ensuing damages suffered by third parties.

### The right of withdrawal

5 of the 25 surveyed countries reported that, in the same way as authors, performers can avail themselves of a right of withdrawal, allowing them to request the removal of their performance from the marketplace or at least the suspension of its exploitation, even where the latter was previously authorized. This information, however, could only be confirmed for Colombia, where the law provides that this right cannot be transferred or waived. However, just as with the right of modification, the requirement of prior compensation for damages to third parties seems to us to significantly limit the actual scope of this right in practice.

### The right of disclosure

More exceptionally, the right of disclosure, enabling the performer to decide on the publication of his performance, can also be guaranteed. This is the case in the Czech Republic and Slovakia. This right, which is actually intended for authors and is extended to performers, seems to us to be of academic interest only, given that a performer's agreement to the fixation and exploitation of an artistic performance necessarily implies that it is made public. In Italy, the law allows artists to oppose any communication to the public or

reproduction of a performance that may be prejudicial to their honour or reputation. Similarly in Sweden, the law grants performers the right to object to the public disclosure of their performance to the public in a context that may be prejudicial to their reputation.

### The dubbing right

It should be noted that in both Spain and Brazil, any dubbing by a third party of a

performance in the original artist's native language requires the express permission of the latter. This is what is called the dubbing right, which is also found elsewhere in some collective agreements, and which can be considered as a specific formulation of the right of integrity. No authorization is required, on the other hand, for dubbing in a foreign language or, a fortiori, for post-synchronization.

## Ownership and transferability of moral rights

In terms of ownership and transferability of moral rights, the trend is clearly towards the non-transferability of moral rights even if performers can waive their exercise *a priori* or *a posteriori* or in special circumstances.

The only country surveyed by FIA where it appears to be possible to transfer one's moral rights is Switzerland. Here the Federal Law of 9 October 1992 on authors' and related rights authorizes the transfer of the moral rights of authors' and, by analogy, also of those of performers. The law however clarifies that the transfer of a specific moral right does not imply the transfer of all other rights.

That said, Switzerland seems to be a special case.<sup>12</sup> All other countries responding to the FIA questionnaire - or at least those that guarantee performers' moral rights – prohibit the transfer of moral rights. Among them, the laws of Colombia, Ecuador, the Czech Republic, France, Romania, Slovakia and Spain state that it is impossible to waive these rights, thus making of these rights an absolute entitlement. It is worth mentioning that in Colombia, the Czech Republic and in Slovakia, the provisions recognizing these absolute rights refer directly to the articles related to authors' rights.

In addition, the laws of those countries allowing for the waiver of the performer's moral rights are more or less precise. In northern Europe – i.e. Denmark, Finland, Norway and Sweden – a waiver seems only possible in light of the nature and the extent of the use of the performance.

The Belgian case is an interesting one. First of all Belgian law states that a total waiver of moral rights by the performer is null and void, adding that, beyond any waiver, the performer retains the right to object to any distortion, mutilation or other modification of his performance or any tampering with it that is prejudicial to his honour or reputation. We can therefore conclude that an absolute right to integrity does exist in Belgium.

With the exception of Canada, which clearly authorises the waiver of moral rights, many other countries seem to authorize it by not prohibiting it. These texts establish the non-transferability of moral rights but do not give further details. This is the case, among others, in Brazil, Cameroon, Serbia and Japan.

The question of the relationship between the ownership of rights and the conditions of employment is also worth mentioning. While in most cases the employment relationship has no effect on the holder of the moral rights, it nevertheless happens in some countries - for example

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<sup>12</sup> However, it should also be noted that Italian law mentions neither the waiving nor the transferability (or not) of performing artist's moral rights.

in Switzerland - that the full enjoyment of this right can be challenged where the performer is an employee. Thus the employee status appears in these countries to make the performer liable towards his employer, forcing him to abandon or minimize the prerogatives derived from moral rights.

## Term of protection

Under international law, the term of protection of performers' moral rights may not be less than the term of protection of property rights, a term that the WPPT sets at 50 years after fixation. In fact, this period varies considerably from one country to another.

We can identify two broad categories of countries regarding the term of protection: those that apply a minimum protection, similar to that recommended by international law; and those that consider moral rights as inalienable and permanent.

Judging from the information provided by the FIA survey, it seems that the most common situation is the alignment with the international standard, i.e. protection is granted for as long as the economic rights of performers are protected. Thus, in Belgium, Brazil, Canada, Denmark, Ecuador, Hungary, Italy, Poland, Portugal and Switzerland, the term of protection of performers' moral rights seem to be the

same as for economic rights. In 8 of these 10 countries, the term of protection is 50 years after the fixation of the performance. In Brazil and Ecuador, the term of protection of performers' moral rights, still mirroring that of economic rights, is a bit longer, at 70 years.

Among the countries that responded to the FIA questionnaire, only Cameroon, Colombia, Spain, France and Romania guarantee permanent and inalienable moral rights to performers. The right of paternity and integrity in those countries may therefore be exercised long after the death of the performer by their estate. In each case, these are Latin countries or countries strongly influenced by French law.

In three of the countries surveyed by FIA, the Czech Republic, Japan and Slovakia, the moral rights of performers ceases with their deaths. In Japan, however, it is common practice for the holders of the economic rights of performers to exercise their moral rights after their death.

The Swiss case is unique because, while the right to integrity is assured for a period of 50 years from the performance or the fixation/communication to the public of the performance, as it is in most countries, this does not apply to the right of paternity that ceases with the performer's death.

Thus, in most countries, intellectual





property laws grant moral rights to performers or their estate, allowing them to bring legal action in case of infringement. However, it is also possible to assert moral claims on other grounds. This is particularly the case in the United States where, as previously mentioned, moral rights are not recognized by law.

## Other mechanisms for the protection of performers' moral rights

Performers can rely on other laws or established practices in order to enforce their moral interests, both as a way to fill a gap or to benefit from greater protection. This may be the case in countries where moral rights are not legally recognized as well as those where they are guaranteed by law. We will see later that, conversely, certain practices may limit the benefit of moral rights within the limits set by law or in the absence of legal provisions.

We can distinguish five main mechanisms to promote the moral claims of performers, complementary to the provisions specifically relating to these.

### § 1. Respect for privacy and image rights

One of the main alternatives for performers to assert their moral interests is the right to privacy, which includes the image right.

The right to privacy is a fundamental human right. It is affirmed by the Universal

Declaration of Human Rights of 1948, which states in Article 12 that *“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”* This right is also included in many texts on fundamental rights such as the European Convention on Human Rights. The latter can only be limited with respect to so-called “public” figures in the exercise of their public function. Despite what one might think, these do not include artists.

The image right that we are particularly interested in here derives from the right to respect for private life. Each person is entitled to control the use of his image and in this context may oppose the use, for commercial purposes or otherwise, of photographs or films in which he/she appears. According to this principle, each use that is made of the image of a person must be authorized by the latter. This concept is thus very close to the moral right as it protects the personality of the performer. Based on his rights to privacy and over his image, a performer may then prohibit the making available of scenes or photographs that he has not authorized.

Many countries responding to the questionnaire reported how these rights may be used by performers or their representatives in order to assert their moral interests. 16 of the 25 countries

surveyed stressed the use that could be made of the right to privacy. These include countries from different parts of the world, both Civil and common law countries, including the United States.<sup>13</sup>

## § 2. Contract Law

Contract law is also a common means of affirming or reinforcing performers' moral interests. A contract allows the performer to assert claims, such as the right to be identified on credits and posters; the right to the integrity of the interpretation; as well as other legal prerogatives and their enforcement mechanisms. Thus, any agreement properly reached and signed by the parties will allow the performer to claim and assert the rights that he has negotiated. This is for example the case in Italy, where performers having a minor role in the production can contractually obtain the right of paternity.

Whilst over half of the responding countries view contracts setting out the terms of a performer's engagement as a means to look after his moral rights, there are still limitations. While well-known performers are given specific provisions in their contracts, this is more difficult to achieve for performers who are starting their careers or who are not well known. In addition, the contract, as we shall see

later, can also be the means by which the performer renounces the exercise of these rights, something that, according to ACTRA (Canada), is regularly demanded by producers.

## § 3. Established professional practices

The third mechanism for the application of performers' moral rights, beyond legal provisions, lies in established professional practices. These sometimes play to the advantage of the performers' moral interests, as performers may rely on standards generally acknowledged by the profession to justify their claims. No responses to the consultation, however, provided specific examples that we could cite.

## § 4. Unfair competition and defamation

The fourth way for performers to assert their moral interests is the application in some cases of the legal provisions relating to unfair competition and defamation. This is the prevailing attitude in the United States. Indeed, the US affirmed, after ratifying the Berne Convention, that they did not need to legislate on moral rights since their laws on defamation and unfair competition ensured the protection of the moral interests of performers.<sup>14</sup>

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<sup>13</sup> R. C. Bind & L. M. Porte, *Protecting moral rights in the United States and the United Kingdom: Challenges and opportunities under the UK's new performances regulations*, Boston University International Law Journal, Vol. 24:213, 2006.

<sup>14</sup> R. C. Bind & L. M. Porte, *Protecting moral rights in the United States and the United Kingdom: Challenges and opportunities under the UK's new performances regulations*, Boston University International Law Journal, Vol. 24:213, 2006.

While defamation consists of making statements that attack the honour of a person or entity, unfair competition refers to abusive commercial practices aiming to force competitors out of the market. Denigration, consisting of casting discredit on a competitor, is a good example. These two principles appear to be relevant in the defence of some of the moral interests of performers. Many claims in the US are based on Article 43 (a) of the trademarks law (“Lanham Act”) aimed at suppressing certain acts of unfair competition.<sup>15</sup>

## § 5. Collective agreements

The last mechanism that can justify claims with respect to the moral rights of performers is collective agreements.

It is not uncommon for collective agreements negotiated between employers and unions, guilds and professional associations of, mostly employed, performers, to contain provisions preserving their moral interests. The advantage of this approach lies in establishing principles that are tailored to the specific needs of performers, thus preventing many legal disputes that legal provisions, which are necessarily general in nature, can often not avoid. We must however take into account the fact that a large number of countries such as Poland, Slovakia and Portugal (among

the respondents) do not have collective agreements in the audiovisual sector.

The most frequently asserted obligation is that of mentioning the performer’s name on the credits. This is followed by clauses concerning nudity and dubbing (in the same language or in a language other than the original performance). Provisions regarding the use of extracts for the purpose of burlesque are also common, unlike those relating to the destruction of outtakes. Collective agreements negotiated by the Union des Artistes (UDA) in Canada also address the issue of ‘making ofs’.

Some examples<sup>16</sup> of provisions in collective agreements on the moral rights of performers merit special examination.

With regard to inclusion in the credits, the collective agreements insist on the legibility of names. Thus, the text negotiated by ACTRA in Canada specifies that, with respect to appearance in the credits, the producer must ensure, as far as possible, that the name is readable and that the credits scroll at a pace enabling them to be read. Also that, where the producer receives an opening on-screen credit, the names of the principal actors must also appear. The producer must include a provision in each licence preserving the terms agreed with the artist concerning

<sup>15</sup> L. Carrière et L. Robic Richard, *Le droit moral au Canada*, Centre CDP Capital.

<sup>16</sup> L. All the extracts are compiled in the annexes of this presentation.

his identification in the credits for any secondary exploitation of the work. A similar provision also appears in the French collective agreement on dubbing.

In France, a collective agreement recognizes dubbing artists as having the same moral rights as performers on screen, with their names included in the scrolling credits. The Italian collective agreement states that the names of the dubbing artists interpreting leading roles, as well as of the dubbing manager, the dubbing assistant and the dialogue adapters must appear at the beginning of the credits for a sufficient period of time and in appropriately sized characters. It also adds that for series, the dubbing artists must be mentioned in each episode. An explanatory note also extends the scope of this provision to each copy distributed or sold “regardless of the medium used”.

Several collective agreements seek to minimize the use of dubbing in the same language as the original work. In Denmark, the text negotiated by DSF establishes that the employer may not dub an artist’s performance in Danish without his consent. The French professional agreement on the specific working conditions and terms of engagement of dubbing artists seems to go even further by prohibiting the dubbing of a French artist

in the French version other than with that artist’s signed, written consent.

Clauses relating to nudity are also common. In general they reinforce the need for prior permission from the artist and carefully regulated working conditions, during both rehearsals and filming. The UDA-negotiated text specifies that in the case of the use of materials containing nudity for the purpose of promotion of the production, each image must be approved by the performer. Still in Canada, the text negotiated by ACTRA establishes that nudity may not be used for promotional purposes in trailers - including on new media - or in the case of television in recaps of previous episodes, without the performer’s written consent.

In terms of role modification, the general principle in collective agreements is that the performer must be informed. However, this obligation varies in degree: while in Denmark only significant changes have to be notified to the actor, in France, any modification or redistribution of the role must be approved by the actor in a rider to the contract. Similarly, in case of a major role cut in post-production, the artist must be informed and may request that his name be removed from the credits and from any publicity.

Principal Characters

Merely Streep \_\_\_\_\_ Sofy Parker  
Antonio Banderas \_\_\_\_\_ Charles Smith  
Scarlet Johansen \_\_\_\_\_ Cristina Goshpith

Production staf

Merely Streep \_\_\_\_\_ Sofy Parker  
Antonio Banderas \_\_\_\_\_ Charles Smith  
Scarlet Johansen \_\_\_\_\_ Cristina Goshpith

Photography

Merely Streep \_\_\_\_\_ Sofy Parker  
Antonio Banderas \_\_\_\_\_ Charles Smith  
Scarlet Johansen \_\_\_\_\_ Cristina Goshpith

Casting

Merely Streep \_\_\_\_\_ Sofy Parker  
Antonio Banderas \_\_\_\_\_ Charles Smith  
Scarlet Johansen \_\_\_\_\_ Cristina Goshpith

Special Efects

Merely Streep \_\_\_\_\_ Sofy Parker  
Antonio Banderas \_\_\_\_\_ Charles Smith  
Scarlet Johansen \_\_\_\_\_ Cristina Goshpith

## Limits to the application of moral rights of performers

While the moral rights of paternity and integrity of the work seem well recognized worldwide, the fact remains that their implementation often runs up against limitations of various kinds. We can distinguish two types of limitations: those introduced by law and those introduced by other means.

Limitations must be considered against the backdrop of the scope of application of these rights. It is important to keep in mind that moral rights are not yet granted to audiovisual performers in some countries, as these have only just been awarded by international law. This is the case in Canada where only artists in a live aural performance or a performance fixed in a sound recording are protected.

### § 1. The limits imposed by intellectual property legislation

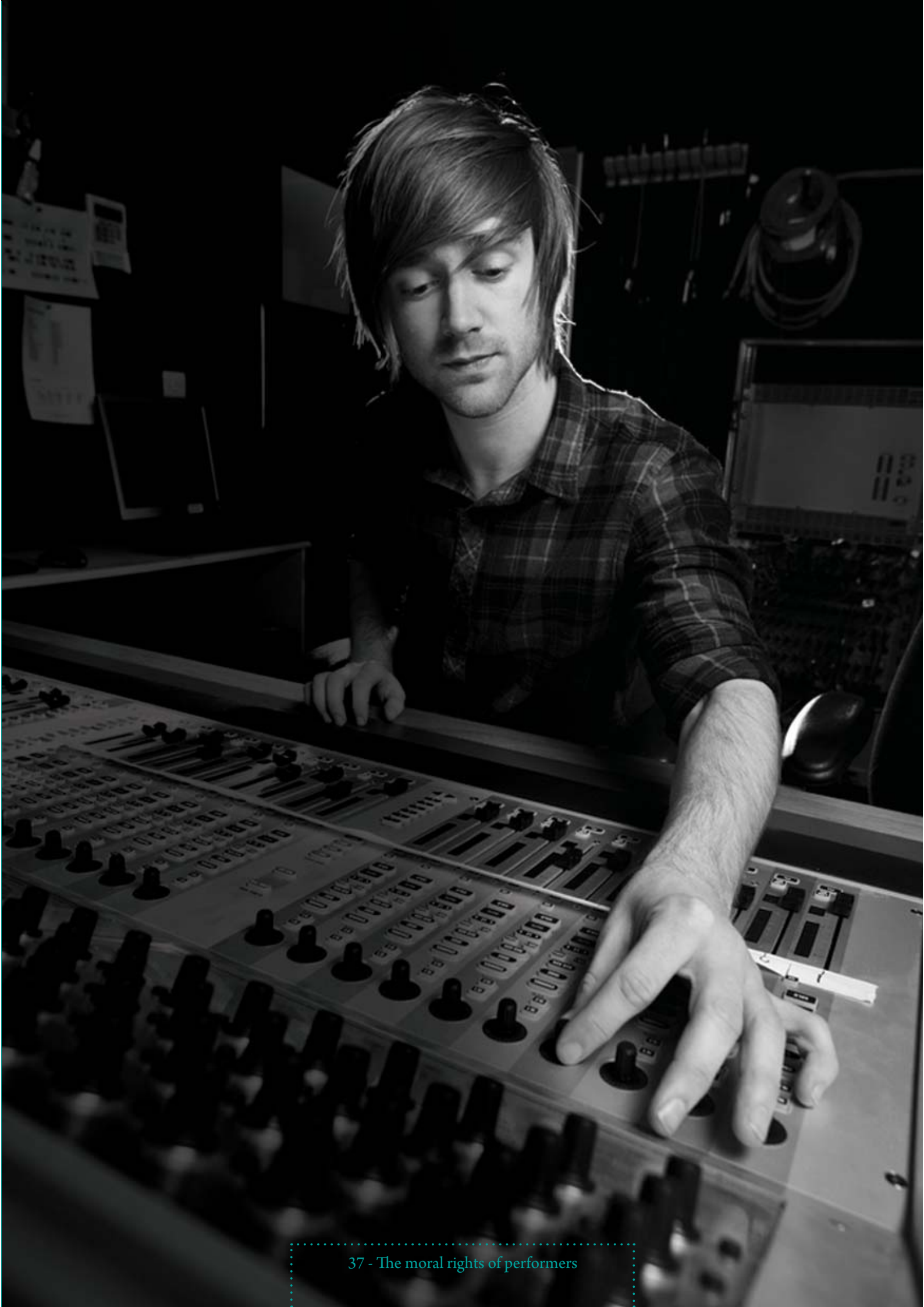
In some countries, the legal provisions guaranteeing the moral rights of performers also evoke the limitations of the same.

When it comes to right of paternity, there is a classic limitation linked to the feasibility of the identification of the performer(s). The fact is that, depending on the circumstances of how a work is

made available or used, it is not always easy to identify to performer(s). This is why a significant number of national laws establish that the reference to the performer must be made in accordance with the nature of the use. We find this idea reflected in various formulations: Swedish law states that the name of the performer should be “*mentioned in the manner and to the extent required by the appropriate use*”. Canadian law states that what “*is reasonable in the circumstances*” has to be taken into account, while Hungarian law states that the application of the law “*depends on the nature of the use*”. Article 113 of the Spanish Intellectual Property Act also recognizes that the type of use may dictate the omission of a performer’s name. In addition to omissions dictated by the type of use of the performance, Portuguese law also mentions any contrary intention of the parties.

The right of integrity is also limited by national laws - as foreshadowed by the agreed statement concerning Article 5 of the Treaty of Beijing, which authorizes any modifications related to a so-called “normal” exploitation of the performance, including editing, compression, dubbing and formatting.<sup>17</sup> At national level, this exception is frequently found in different forms. Thus, Article 92 of the Brazilian law on authors’ rights authorizes “*reduction, compacting, editing and dubbing*”. Japanese law in turn refers to “*inevitable changes*”.

<sup>17</sup> Moreover, as we mentioned earlier, the joint statement also introduces the concept of “substantive” and “objective” prejudice, which could have the effect of expanding the scope of this limitation in jurisprudence.



The right of integrity is generally subject to an intrinsic limitation. This is due to the fact that a performer can only oppose a modification of his performance if it is prejudicial to his honour or reputation. Alterations that do not damage the performer's honour and reputation are therefore permitted *a priori*.

In addition to statutory limitations, one should also note the difficulties encountered by any performer seeking to assert his rights in practice. Enforcing a moral right implies a lawsuit - often expensive for the performer and the outcome of which can be far from certain, also bearing in mind the legal ambiguity and the often limited case law in this area. This is all the more flagrant in countries where the "self-employed" status of performers, such as in Slovakia, prevents them from being protected by a union that could promote better compliance with the law by negotiating with producers or by offering its members legal council. These difficulties were mentioned several times during the survey, for example, by our members in Japan and Colombia.

Finally, it should be recalled that national legislation may provide that moral rights may be waived.

## § 2. Other limitations

Limitations of a different nature are habitually quite similar to those expressly

provided by the law. Most often, professional practices recognize that, at times, mentioning all the performers in a given production may be a very difficult task and therefore help clarify the legal limitations. Where the way the performance is to be used makes it complex to identify all the performers, the industry then accepts, for example, that only performers in lead roles be identified.

This is the case in Canada where the right of paternity may be limited by what "*is reasonable in the circumstances*". Thus, it is generally accepted that radio can claim, when broadcasting a sound recording, that it is not reasonable in practice to name all the performers in that recording. Most of the time only the name of the main artist is therefore mentioned. This is also the case in Denmark, Poland and Switzerland. This exception applies, however, more rarely to audiovisual fixations where performers can be easily listed on the credits. In Japan, exceptions are generally accepted to meet airtime requirements.

Limitations may also arise when collective agreements acknowledge essential needs of the industry, accepting occasional limitations to the implementation of moral rights in some cases. For example, in Canada, the independent production agreement negotiated by ACTRA provides that the formal requirements for credits may be relaxed to meet the requirements

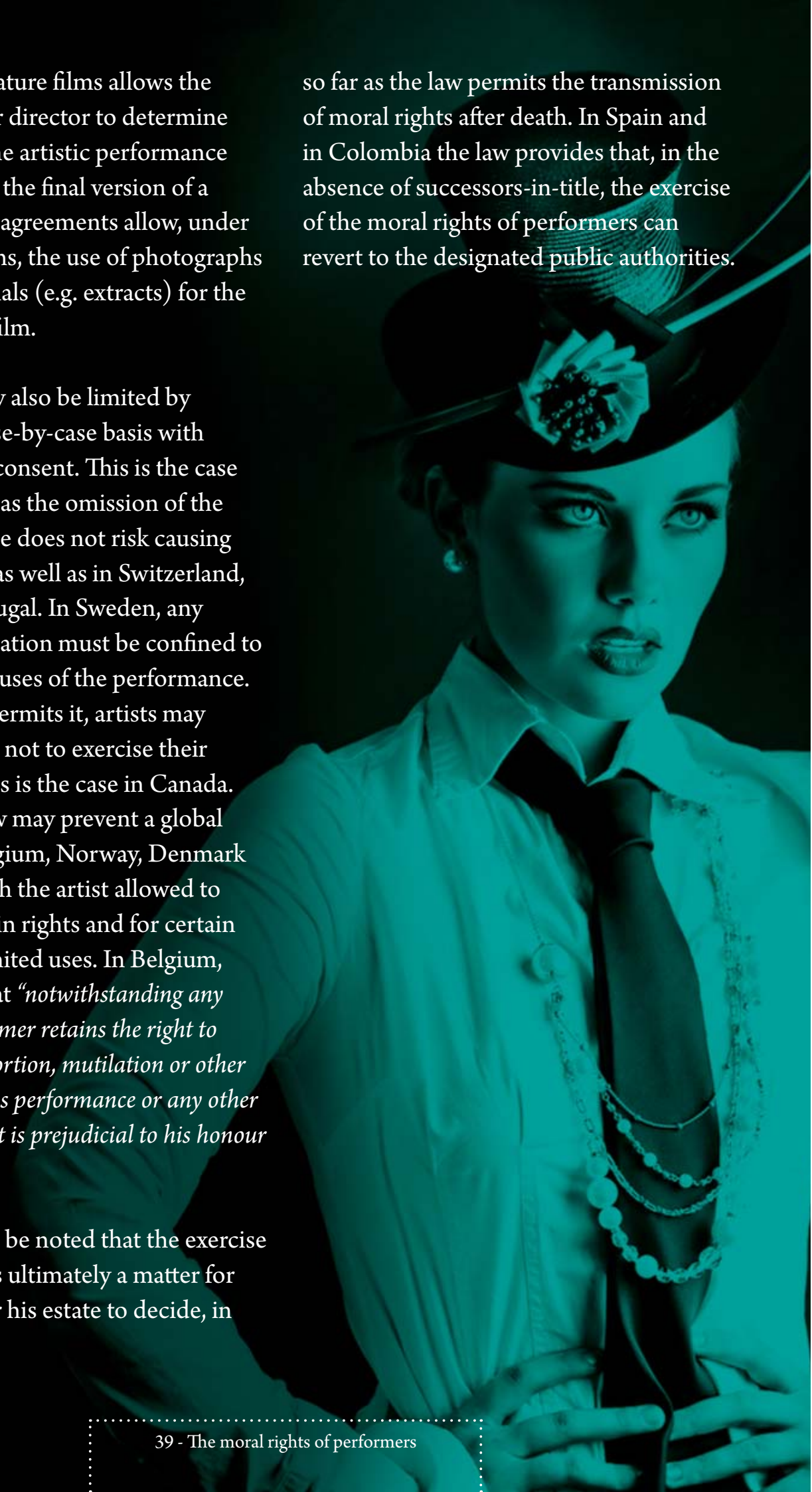



agreement on feature films allows the producer and/or director to determine the amount of the artistic performance to be retained in the final version of a film. Also, many agreements allow, under certain conditions, the use of photographs and other materials (e.g. extracts) for the promotion of a film.

Moral rights may also be limited by contract on a case-by-case basis with the performer's consent. This is the case in Japan, as long as the omission of the performer's name does not risk causing damage to him, as well as in Switzerland, France and Portugal. In Sweden, any contractual limitation must be confined to clearly specified uses of the performance. Where the law permits it, artists may agree in advance not to exercise their moral rights. This is the case in Canada. However, the law may prevent a global waiver, as in Belgium, Norway, Denmark and Sweden, with the artist allowed to waive only certain rights and for certain specified and limited uses. In Belgium, the law states that *"notwithstanding any waiver, the performer retains the right to object to any distortion, mutilation or other modification of his performance or any other attack on this that is prejudicial to his honour or reputation"*.

Finally, it should be noted that the exercise of moral rights is ultimately a matter for the performer or his estate to decide, in

so far as the law permits the transmission of moral rights after death. In Spain and in Colombia the law provides that, in the absence of successors-in-title, the exercise of the moral rights of performers can revert to the designated public authorities.





**Survey Results - The moral rights of  
dubbing artists: generally accepted  
but weakly applied**



USB STUDIO CONDENSER

Dubbing artists are important, both in terms of numbers and by the nature of their work, in the audiovisual industry. There is an essential activity, enabling works to travel across borders and reach wider audiences. But what moral rights are granted to these artists? Are they considered, in this context, as fully-fledged performers in their own right?

### The dubbing artist, a fully-fledged performer?

Dubbing is the activity of an artist who superimposes his own voice on that of the original performer, often in another language. This work is carried out by performers, some of whom confine themselves essentially to this activity.

Given that dubbing is only one of the many activities that can be carried out by a performer, all the countries responding to the FIA questionnaire firmly include dubbing artists in the category of performers. In the absence of explicit references, the definitions in the intellectual property codes and regulations seem broad enough to include this category of artists. Thus, they enjoy - at least in theory - the same moral rights as any other performer. This is indeed the case in the majority of countries responding to the FIA questionnaire in which dubbing is carried out.

However, in seven countries, dubbing artists are not protected as comprehensively as other performers, in some cases owing to a statutory discrimination between sound performances (where moral rights are granted) and audiovisual performances (as yet unprotected), which sends us back to the question raised at the beginning of the study of whether dubbing artists are protected under the WPPT or under the Treaty of Beijing. Only Brazil, French-speaking Canada, Italy, Denmark and Japan offset this discrimination by other means. In Canada this is done by collective agreements, in Japan and Denmark via established practices in the industry. Brazil and Italy make use of both methods.

### The moral rights granted to dubbing artists

The main prerogative granted to performers in their dubbing work is the right to be named in the TV and film credits. Among the testimonies gathered by FIA in countries where dubbing is performed, only Belgian and Colombian dubbing artists do not seem to enjoy this right until now. In France, the collective agreement on dubbing recognizes that dubbing artists “*are entitled to respect for their name, their quality and their performance*” and to have their names mentioned in the credits of their work.

Less systematically, but in a significant number of instances (thirteen countries), dubbing artists also have the right to be identified on the reproductions of their performances, including DVD and BluRay covers. In Italy, this right is granted in the collective agreement.

The right of integrity is, in turn, applied by 15 of the 19 surveyed countries that use dubbing. It is worth noting that in Italy this is addressed only through individual contracts.

In Denmark, the unions point out the principle of respect for “best practices”, which suggests a number of limitations to these rights.

## Respect of the moral rights of performers

We have seen what rights are generally granted to dubbing artists, however one can ask ourselves how far they are respected.

Whilst only a small number of actors’ unions report systematic violations of the moral rights of dubbing artists (Colombia, Japan and Spain); nine (Belgium, Hungary, Czech Republic, Slovakia,

Norway, Portugal, Sweden, Switzerland and English-speaking Canada) are of the opinion that they are rarely or almost never applied.

Hungarian dubbing artists criticize in particular the scrolling speed of the credits, which makes it impossible to read their names. They also complain that their names are never mentioned on the covers of DVDs and other physical media marketing their performances, even though the right to be named on such material is granted by law to all performers.

The remaining unions (Brazil, French-speaking Canada, Finland, France, Italy and Poland) consider that these rights are regularly applied. However, in Canada, UDA states that whilst collective agreements are complied with, the rights covered by them are very limited. Moreover, it seems that the names of dubbing artists in French-speaking Canada are regularly mentioned at the very end of the credits, by which time most of the audience has left the cinema or changed TV channel. In the same spirit, the Finnish union emphasized the irregular nature of the scrolling of credits.

# Recommendations

The general recognition of the moral rights of performers has considerably grown over the last twenty years. However, the legal framework is far from homogeneous and the implementation of these rights, including in industry practice, is not always optimal. The FIA survey has also found in some cases that performers' unions lack sufficient knowledge about their own national legal framework.

In this context, FIA recommends to its affiliates:

- To improve their knowledge of the national legal framework granting performers intellectual property rights protection, both as regards economic and moral rights. It seems essential that the performers' unions master these issues perfectly in order to best help their members.
- To promote the legal recognition of the moral rights of performers in their countries, regardless of the audio or audio-visual nature of their performances. The recognition of these rights should be

further boosted with the ratification of the WIPO Beijing Treaty. Each FIA member must therefore encourage its government to ratify the treaty and transpose its provisions into national law, thus bringing a long-standing discrimination between sound and audiovisual performances to an end where it still exists. The recognition of the moral rights of performers ought to allow them to enjoy, at a minimum, rights of paternity and integrity to protect their honour and reputation.

- However, in view of the limitations in Article 5 of the Treaty of Beijing - and especially of the right of integrity - by means of the agreed statement attached to it, FIA invites its members to promote good practices, and to review their collective agreements or to propose new model contracts with tailored provisions concerning the moral rights of performers.
- Among the relevant provisions identified by FIA in its members' collective agreements, four appear to be widespread and may be used as best practice:

- o Clauses emphasizing the readability of credits: font size, scrolling speed, order of priority in the credits, etc.;
- o Clauses limiting the possibility of dubbing in the same language as the original performer;
- o Clauses strengthening the requirement for performers' prior authorization for nude scenes, and especially for any use of such scenes as excerpts taken from the complete original work (trailer, etc.).
- o Clauses requiring the artists' explicit consent for substantial role changes.

- FIA also believes that, since dubbing artists are performers in the full sense of the term, there is no reason for them to be discriminated against. Thus, it seems essential that their moral rights should be guaranteed in the same way as those of the performers of the original works. FIA encourages its members to press for the recognition of the moral rights of dubbing artists, whether by the adoption of new legislation, the amendment of existing laws, or simply by industry conventions or best practices.

The latter need in particular to enjoy the right to be mentioned in the distribution of an audiovisual work and in ways that make them most readily identifiable. This can take the form of credits, DVD covers or other physical media, including movie posters and other tools used to promote and disseminate dubbed works.

- The Federation also urges its members to ask their respective governments to implement the laws that already exist, especially in those countries where the moral rights of dubbing artists are often ignored in practice.

- Finally, it appears essential that countries fully comply with their international commitments with respect to moral rights. While it is true that regulations and case law, in particular with regard to defamation, unfair competition and image rights, may offer a similar solution, they do not appear to guarantee moral rights in their entirety.

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## Collective agreements and national agreements

### ACTRA

- Independent production agreement between the Alliance of Canadian Cinema, Television and Radio Artists (“ACTRA”), the Canadian Media Production Association (“CMPA”) and l’Association des Producteurs de Films et de Télévision de Québec (“APFTQ”) covering Performers in Independent Production, January 1, 2013, to December 31, 2015

### DSF & DAF

- Feature films agreement

### SFA

- Accord national professionnel sur les conditions particulières de travail et les conditions d’engagement des artistes interprètes du doublage

- Accord national de salaires du doublage
- Convention DAD-R (Droit des Artistes dans leur activité de Doublage- Révisée)
- Convention collective nationale des acteurs et acteurs de complément de la production cinématographique
- Convention collective des artistes-interprètes engagés pour des émissions de télévision

### UDA

- Entente collective entre l’Union des Artistes et l’Association Québécoise de l’Industrie du Disque, du Spectacle et de la Vidéo visant la production de spectacles de musique et de variétés à la scène, y incluant la revue musicale, et liant le regroupement des producteurs multimédia pour la production de spectacles de commande à la scène, 28 août 2005 au 17 août 2008

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