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International and national legal aspects of intellectual property rights in music

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Abstract: *The legal protection of authors' rights for musical works appeared in an incipient form as early as the 18th century, in the form of the transfer of copyright for economic purposes through the direct sale of a manuscript, without being followed by royalties' payable for the long-term "exploitation" of the work. It was not until the nineteenth century that the law granted „lifelong" protection to composers for the copyright of their creation, at the same time as the Royalty Contracts, which ensure the payment due for repeated performances. Nowadays, rights were extended to musical works and the collection of money from multiple sources, whether from any format of recorded music or film music, advertising and „broadcasts" of all kinds, as all genres of music. This research theme is motivated by the need for a critical evaluation of the international and national legal aspects governing intellectual property rights in music.*

Key-words: *copyright of musical works, intellectual property rights in music, Royalty Contracts*

1. A Brief historical overview of copyright in Music

The concept of copyright, meaning the creator's right to be recognized for their work and to benefit from its exploitation, has come a long way from its origins to the present. Although recognition of the author was present since antiquity, the modern form of copyright began to take shape only in the 18th century, with the development of printing and the increasing economic importance of intellectual works.

A crucial moment in this evolution was the adoption of the Statute of Anne in England, in 1709. This law, considered the first modern copyright law, granted writers control over their works for a limited period of 14 years, with the possibility

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of renewal for another 14 years. The Statute of Anne represented a major paradigm shift, recognizing for the first time the creator's right to benefit financially from their work (Cornish 1981, 35).

Throughout the 18th and 19th centuries, copyright legislation gradually expanded to include musical works. An important moment was the Dramatic Copyright Act of 1833, which granted specific protection to theatrical works.

Also, in 1842, British legislation was extended to protect music produced abroad (Armstrong 1990, 225). Another important milestone was the establishment of SACEM - Société des Auteurs et Compositeurs et Editeurs de Musique, in France, in 1851. SACEM was the first collective management society for copyright in the world, aiming to protect the rights of composers and collect the remuneration due to them for the use of their works. The emergence of SACEM marked a new stage in the evolution of copyright, demonstrating the importance of collaboration between creators to protect their rights.

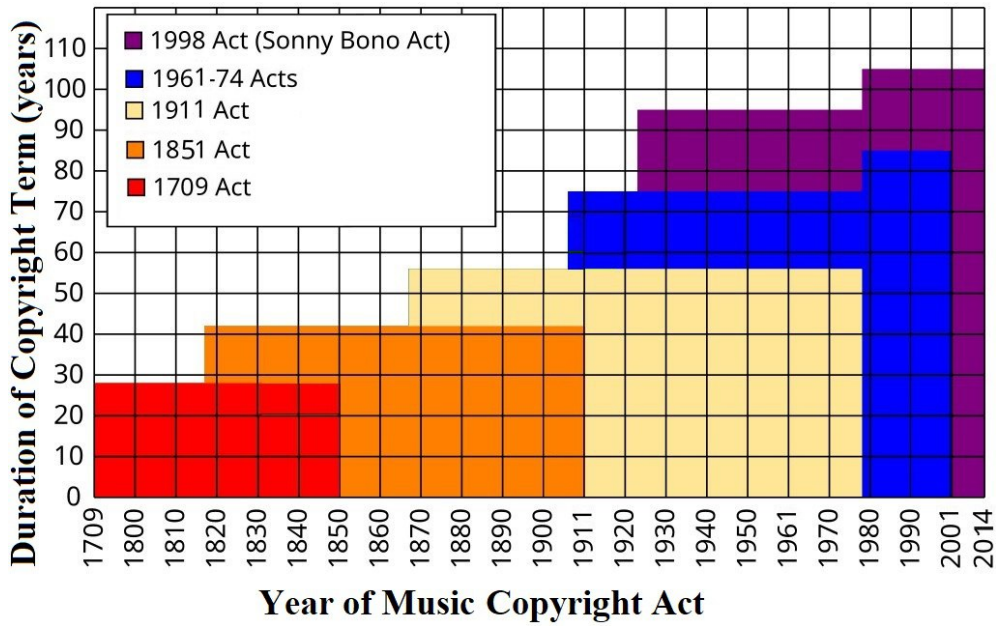

Fig. 1. *Evolution of copyright law in music*

The 19th century brought a significant modernization of copyright legislation, culminating in the Great Codification Law of 1911. This law unified all copyright provisions into a single legal act and extended protection to sound recordings. It also

extended the term of copyright protection to the author's entire lifetime plus 50 years (Sonny Bono Act)

The 20th century was marked by the adoption of important international conventions, which aimed to harmonize copyright legislation globally. These include the Berne Convention of 1886, which established a minimum standard of copyright protection for literary and artistic works, the Rome Convention of 1961, which extended protection to performers and producers of phonograms, and the Stockholm Convention of 1967, which established the World Intellectual Property Organization (WIPO). WIPO's role is to promote the protection of intellectual property worldwide and to facilitate international cooperation in this field.

The emergence of MIDI (Musical Instrument Digital Interface) technology in 1982 revolutionized music production. MIDI enabled the interconnection of digital musical instruments and their control through a standardized protocol, facilitating collaboration between artists and producers. This innovation led to an explosion of creativity in the music industry but also brought new challenges for protecting the copyright of works created using this technology.

The end of the 20th century and the beginning of the 21st century brought new challenges related to digitalization and globalization. The advent of the internet and digital technologies facilitated access to copyrighted works but also increased the risk of piracy and illegal distribution. In response to these challenges, a series of laws and directives have been adopted to protect copyright in the digital age.

Among the most important regulations are the Digital Millennium Copyright Act (DMCA) in the US (1998), which introduced strict measures against online piracy and established clear responsibilities for internet service providers, and the European Copyright Directive (2001), which harmonized copyright legislation in the member states of the European Union (Popescu 2020, 51).

Other important legislative aspects include the adoption of Directive 2014/26/EU, which regulates the collective management of copyright for online musical works, and Directive (EU) 2019/790 on copyright in the Digital Single Market, which sets clearer rules for the use of protected works on online platforms.

The evolution of intellectual property rights, especially in the field of music, has been a continuous process of adaptation to new technologies and economic realities. Legislation has evolved from limited protection to more comprehensive protection, covering a wide range of creative works, including sound recordings and digital works. Challenges remain, but progress to date provides a solid foundation for protecting creators' rights and promoting creativity in an increasingly digitized world.

2. Objectives

The legal subject of copyright is not new in law or music. This research topic is motivated by the need for a critical assessment of international and national legal aspects governing intellectual property rights in music. In a globalized industry, where digital music distribution takes place worldwide, there are significant differences between national laws and major challenges in the uniform application of copyright. The research will examine these challenges, identify solutions for harmonizing regulations, and propose strategies for more effective and equitable protection of intellectual property rights globally.

The need for this research is to explore in depth the essential role these rights play in protecting and promoting artistic creation, in developing the music industry, and in supporting cultural diversity globally. In a context characterized by rapid technological changes, digitalization, and globalization, intellectual property rights are the legal basis that guarantees the recognition and adequate remuneration of the work of music creators and performers, thus preventing unauthorized exploitation and abusive use of their works.

An important aspect of this research is the identification and analysis of the complex challenges facing the music industry today. Already known phenomena such as digital piracy, sampling (taking a musical idea to generate a rhythmic-harmonic-melodic background), modifying primary elements to alienate the original sound but maintain the musical idea (pitch bend, changing the rhythm and/or essential sound timbre), web scraping unauthorized use of works on online platforms and difficulties in collecting royalties highlight the need for adequate protection of intellectual property rights.

The purpose of the research is to clarify how these rights can be adapted and effectively applied in a digital environment, offering innovative solutions and de lege ferenda recommendations for improving regulations and legal protection practices.

3 International case

The Hütter v. Pelham case is a significant example in the field of copyright, with important implications for the use of sampling in contemporary international music. This case was decided by the Court of Justice of the European Union (CJEU) and

addressed complex issues related to originality, the rights of phonogram producers, and exceptions to copyright.

The parties involved are Ralf Hütter and Florian Schneider, members of the German band Kraftwerk, who filed a lawsuit against Moses Pelham and his company Pelham GmbH, for using a fragment of approximately two seconds from their song „Metall auf Metall" in which Pelham and Haas sampled and looped in their own production for the rapper Sabrina Setlur's 1997 song „Nur Mir".

Legal Action consists in the fact that Hütter and Schneider argued that Pelham electronically copied a musical fragment and used it in a continuous loop in his song, without obtaining the necessary permission from the two authors.

The legal issues caused are copyright infringement. Thus, the Court had to decide whether the use of a short sample constitutes an infringement of the phonogram producer's copyright.

The concept of Fair Use: It was discussed whether Pelham could invoke an exception for the free use of protected material. This included assessing whether the use of the sample could be considered a „quotation" under Article 5(3)(d) of the Directive (Moser 2002, 143).

Musical expertise plays a crucial role in copyright cases, especially those involving sampling. It was essential to determine if the sample was distinctive enough to be considered a substantial reproduction. This involves a detailed analysis of the melodic and rhythmic structure (Stamatoudi 2004, 227). In the Hütter v. Pelham case, the similarity analysis was done. The Court assessed the similarity between the two melodies, focusing on the rhythmic structure and specific musical elements. This involves a detailed analysis of the notes, rhythm, harmonies, and the context in which they are used.

Phonogram Producer Rights: The CJEU ruled that reproducing a sample from a song, even a very short one, is considered a „partial reproduction" that falls under the exclusive right of the phonogram producer. This involves analyzing European copyright legislation, in particular Directive 2001/29/EC (Rosati 2013, 55).

Sample Modification: The Court ruled that if a sample is modified in a way that becomes „unrecognizable" to the ear, its use does not constitute a reproduction. This means that simply modifying it is not enough; the sample must be transformed so that it is no longer identifiable as part of the original work.

Fair Use Exception: The Court concluded that copyright exceptions must be interpreted strictly and that the use of a sample that allows the identification of the original work cannot be considered fair use.

Confirmed Infringement: The CJEU has ruled that the reproduction of a sample, even a very short one, from a song must be considered a „partial reproduction" falling under the exclusive right of the phonogram producer. The court emphasized that if the part is recognizable, its duration does not matter; any recognizable reproduction is considered an infringement.

4. National case

The Pomohaci v. Predescu case (Bistrița-Năsăud Court, case number 6087/112/2012 and Cluj Court of Appeal, case number 947/R/2014), generated a broad debate on originality and copyright in Romanian folk music, highlighting the complex relationship between folk tradition and individual creation.

The parties involved are Valeriu Nicolae Predescu, who accused Cristian Pomohaci of plagiarism, claiming that the latter copied the melodic line of the song „Cânt la lume că mi-i dragă", composed by his mother, the late singer Valeria Peter Predescu and used it in the song „De la Rebrișoara-n jos". Pomohaci rejected the accusations, claiming that his inspiration came from folklore.

The legal action consists in the fact that the courts, both the Bistrița-Năsăud Court and the Cluj Court of Appeal, rejected V.N. Predescu's action, concluding that the disputed melodic line does not constitute an original creation, but a borrowing from folklore.

The verdict was based on a detailed analysis of the evidence, including musical expertise, addresses from institutions specialized in folklore, and testimonies from musicians with experience in the field of folk music.

The experts consulted in this case (according to article 201 par. 3 of the Civil Procedure Code, which allows the court to consult specialists in fields relevant to the resolution of the case) were university professor Ph.D. Ioan Bocșa, a specialist in folklore and folk music performer and Ph.D. Gavril Țărmure, specialist in classical music and record producer, including in the field of folklore. Professor Ph.D. Ioan Bocșa, had a crucial resolution in demonstrating the folk origin of the melodic line. He explained that, in folk music, originality is not limited to the melodic line, but is defined through several factors, such as rhythm, lyrics, orchestration, and interpretation. Mr. Bocșa also explained that registering a song with UCMR-ADA does not guarantee its originality, but only creates a simple presumption, which can be refuted with other evidence.

Also, the court requested expertise from the Romanian Academy - „Constantin Brăiloiu" Institute of Ethnography and Folklore Bucharest and from the Folklore Archive in Cluj-Napoca of the Romanian Academy. The expertise offered by the specialists concluded that the melodic line of the song „Cânt la lume că mi-i dragă" is not an original composition, but a variant of a traditional dance melody from the Someș area. It has been shown that there are several variants of this melody, recorded before the song „Cânt la lume că mi-i dragă", including a variant performed by the Huedin Vocal Group in 1971.

Experts explained that Romanian musical folklore is transmitted orally, and current performers, although they bring their own creative contribution, cannot claim copyright to pre-existing melodies. In the present case, the court concluded that, although the plaintiff's mother adapted the melodic line for the song „Cânt la lume că mi-i dragă", this does not confer copyright on the original composition. Also, several musicians with experience in folk music, presented themselves as witnesses and confirmed that the melody has been known in folklore for a long time.

According to Law no. 8/1996 on copyright, only original works of intellectual creation can constitute the object of copyright. Folklore, by its anonymous and collective nature, does not fall under this law (Predescu 2021, 82).

The courts recognized the moral right of the composer to be recognized as the author of his work. However, in the present case, it has been shown that the melodic line, even if personalized, is not an original creation of Valeria Peter Predescu, but a borrowing from folklore. Therefore, an infringement of copyright could not be found. Therefore, the court rejected the plaintiff's action, considering that the defendant's act was not unlawful, as there was no copyright infringement.

The Pomohaci v. Predescu case highlighted the difficulties encountered in establishing originality in folk music, where borrowing from folklore is a traditional practice. The court decisions emphasized the importance of protecting copyright, but also recognized the specific nature of musical creation inspired by folklore.

The Pomohaci v. Predescu case set an important precedent in Romanian jurisprudence regarding copyright in folk melodies. The court decisions highlighted the importance of protecting the intangible cultural heritage of Romania, represented by folklore, and clarified the limits of copyright in relation to folk works.

5. Results and discussions

On the international level, the CJEU Decision in the Hütter v. Pelham case has significant implications for the music industry. The case clarifies the copyright protection offered to phonogram producers and establishes strict rules regarding the use of samples. The court emphasizes the need to strike a balance between the protection of creators' rights and artistic freedom.

In Romania, the Pomohaci v. Predescu case, presents a complex dispute regarding copyright in the context of Romanian folk music, especially regarding the relationship between folklore and originality (Mihai 2019, 25).

In this case, the courts recognized that folk music performers have related rights over their own performances, but these do not include copyright to the musical composition itself. The expertise of the specialist Ph.D. Ioan Bocșa was essential in assessing the similarities between the melodies and establishing the folk origin of the melodic line, but although he had expertise in folk music, he did not have formal training in copyright.

The Pomohaci v. Predescu case highlighted the need for better legal protection for works inspired by common cultural traditions and demonstrates the complex relationship between folklore and copyright in Romanian music. The court decisions highlighted the importance of respecting the rights of creators, but also highlighted the difficulty of establishing originality in the context of borrowing from common cultural traditions.

6. Conclusions

Originality: Similar to the Hütter v. Pelham case, in the Pomohaci v. Predescu case, the courts assessed whether the disputed melody was original or a borrowing from folklore.

Proof of Similarity: Both cases required an analysis of the similarities between the melodies and an evaluation of the evidence presented.

Hütter v. Pelham: The CJEU ruled that the use of a recognizable sample constitutes copyright infringement.

Pomohaci v. Predescu: The Romanian courts ruled that the disputed melody was not considered original, but a borrowing from folklore.

The Hütter v. Pelham case will have an overwhelming impact on artists, as the solution given by the CJEU will influence how artists approach the use of existing materials in their future creations, considering the legal risks associated with sampling, and in the case of Pomohaci v. Predescu the Court underlined that the simple interpretation of a variant of a folk melody does not confer copyright on the personalized musical composition and generated an important debate regarding the need for clearer legal regulations regarding the protection of folk works and creations inspired by folklore.

Rights of Creators: Both cases highlight the importance of respecting the rights of creators and the challenges related to common cultural influences.

Legal Clarifications: The decisions provide clarifications on how copyright law applies in contemporary music.

The Hütter v. Pelham case serves as a significant example of the complexity of copyright in the contemporary music industry, highlighting the importance of musical expertise in assessing similarities between musical works. Compared to the Pomohaci v. Predescu case, both litigations highlight the challenges artists face in navigating cultural influences and protecting the originality of their works. These cases show the need for a clear and balanced interpretation of copyright legislation in a diverse musical landscape and the need for experts with dual specialization, both legal and musical, to be able to demonstrate the subtleties that arise from protecting the copyright of musicians.

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