**Thank you Mr President**

**Dear all, dancers or no dancers**

**As the CID’s legal advisor, I think that its useful to make a point to the**

**LEGAL RIGHTS OF DANCERS IN THE INTERNATIONAL AREA**

The performances of actors, singers, musicians and **dancers** are an integral part of the creative process in presentations to the public.

Since the very first performance recordings, in sound and images, it has been accepted that performers should have rights over those recordings and a share in the proceeds from their commercial exploitation.

Nevertheless, the first international recognition of these so-called “neighbouring rights” (rights related to copyright) did not come until adoption of the 1961 by the [Rome Convention](https://www.wipo.int/treaties/en/ip/rome/index.html).

This treaty gave performers in audiovisual works such as feature films, videos and television dramas rights against unauthorized recordings of their performances.

However, and in contrast to performers in sound-only recordings (CDs, MP3 files …), once performers in audiovisual works had consented to the initial recording of their performance they were given no rights over its use.

While a number of countries have domestic legislation that grants certain rights to performers in audiovisual works, including the right to be paid when these works are copied or distributed, there is no international treaty giving performers control over how and when their work is used abroad, or any legal right to payment.

The stumbling block to agreement in both 1996 and 2000 was a stand-off between the USA and the European Union over the transfer of rights.

In audiovisual productions the transfer of rights from performers to producers is essential so that producers can negotiate commercial deals with cinema chains, broadcasters, DVD retailers and so on without having to seek authorization from each individual performer.

In the USA performers’ rights are automatically transferred to producers, while actors’ pay is negotiated by a strong trade union, the Screen Actors Guild.

In Europe, practice varies.

In some European countries, transfer is automatic while in others it is presumed by law but an opposite agreement is possible.

Other countries such as the UK have no statutory rules, leaving transfer arrangements to a contract between the performer and the producer.

In addition, even after transferring authorization rights, performers in some countries retain **moral rights** to object to lack of attribution and distortion treatment of their performances.

**In June 2011 negotiations in**[**WIPO’s Standing Committee on Copyright and Related Rights**](https://www.wipo.int/copyright/en/)**was produced a compromise text that allows countries to keep their own transfer systems.**

The new draft article permits countries to require transfer of authorization rights to the producer unless there is a contract to the contrary; it also allows for other agreements providing performers with the right to remuneration for their work.

This provision would open the way for producers receiving payment for exploitation of audiovisual works abroad to share the proceeds with performers under whatever arrangements prevail in national law.

**French and European copyright** stems are part of what we call « civil law ».

In common law countries, the copyright is in force.

The difference is fundamental: firstly, in the case of copyright, the work must be registered with an organization in order to be protected, and secondly, there are no moral rights in copyright.

Copyright in USA and intellectual property rights in EU do not work in the same way: in countries that apply copyright, the investor is advantaged; it’s him who is protected first.

In countries that apply European law, the author is protected first.

French copyright law is the most protective in the world.

**FRENCH LEGAL RIGHTS FOR DANCERS AND CHOREOGRAPHERS**

In France, choreographic works have only been officially and legally protected since 1957.

**The dancer is not only an artist, but also a professional.**

They are therefore entitled to remuneration for their work.

This remuneration must, in principle, be twofold, consisting of a salary and financial rights to their performance, where it is protected by law.

**Dance performers are therefore recognized by the law.**

The Intellectual Property Code makes a classic and clear distinction **between the author of a work and its performer.**

The article L. 113-1 of the Code of Intellectual properties defines the former as the person under whose name the work has been disclosed.

Conversely, the second, the performer, is defined in article L. 212-1 as "the person who represents, sings, recites, declaims, plays or performs in any other way a literary or artistic work or a variety, circus or puppet show".

This definition applies without distinction between the performer is a professional or an amateur.

Moreover, the performer's rights can only be exercised with due respect for the author's rights, since the performer only holds rights that are said to be related to those of the author.

"Neighbouring rights are rights granted to persons involved in the creation of a work, but who are not considered to be the principal author.

They have a right to the exploitation of the work.

They are also entitled to a form of remuneration that is equitable and provided by law".

The different forms of choreography, improvisation, the creative work carried out in collaboration between the choreographer and the dancers, and the difficulty of distinguishing between the dancer and the choreographer (due to a lack of resources or artistic will) raise the question of whether dancers should always be considered as mere performers, with the consequences that this may have on their rights, which are often sacrificed in favor of those of the choreographer.

Consequently, (article L. 212-2) in the French Intellectual Property Code is specified that performers have a **moral right** to their performance, which requires respect for their name, their status and the form of their performance.

Performers are not the only holders of related rights; there are also producers of phonograms and videograms and audiovisual communication companies.

On the other hand, he is the only one to be granted a moral right.

**This particularity is due to the fact that he alone carries out an artistic activity and not simply an economic one.**

With this moral right, the performer can obtain compensation in the event of an essential distortion of his or her performance, as stated in a ruling by the social chamber of the Cour de cassation (French Supreme Court) on 8 February 2006.

**Applied to the dancer, this right to respect for his or her name and status in the show and/or the company gives him or her the opportunity to demand that it be mentioned in all communication media.**

The right to respect for interpretation also enables the artist to assert his or her right in the event of distortion, by video editing for example, in the context of a repeat in an audiovisual work.

The French Code states that the artist's express authorization is required for the reproduction and communication to the public of his or her performance.

The principle of specialty adds that individual authorization is required for each of these actions; authorization to fix does not apply to reproduction.

This is a rule of public policy that cannot therefore be amended by contract.

In return, this authorization gives rise to remuneration for the holder of the right, which is different from his or her salary.

For example, a dancer who has given permission for his or her performance to be shown to an audience will also have to give permission for the film to be made, and for it to be shown to the public.

This requirement for triple authorization, even if it has more of a financial aspect, makes it possible to circumvent the absence of a disclosure right, which it puts in place materially, without calling it that. Rights related to copyright are therefore close to copyright.

It would seem possible to make a distinction and combine the two statuses, **performer and author,** depending on the activity concerned.

For example, a French Court decision (ruling by the Nanterre Tribunal de Grande Instance on 5 November 1997) recognized that it is possible to be the holder of copyright and neighboring rights and thus act in both fields.

Concerning the choreographic stems, French law system established the Article L111-1

*"The author of a work of the mind enjoys, by the mere fact of its creation, an exclusive intangible property right that is enforceable against all”.*

According to the French law (paragraph 4 of article L. 112-2 of the CPI), ***"choreographic works, circus acts and tricks and pantomimes, the implementation of which is fixed in writing or otherwise, shall be considered as works of the mind".***

Although the law does not specifically refer to "stage productions", case law has accepted that they can benefit from the protection afforded by the law.

This MORAL right is attached to the author and has three characteristics:

- Perpetual: there is no limit to the duration of protection;

- Inalienable: the author cannot waive it or transfer it by contract;

- Imprescriptible: no statute of limitations can extinguish the right to take legal action to enforce it.

The author enjoys a moral right over the work that enables him to protect it against any form of distortion and also to choose when his work will be disclosed, whether he wishes to withdraw the exploitation rights and whether he wishes to be attributed the authorship of the work.

These rights cannot be assigned (see below: "Moral rights").

Moral rights comprise four prerogatives:

- The right to authorship: the author has the right to make himself publicly known as the author and to demand that his name be mentioned on the work disclosed. They may choose to remain anonymous or use a pseudonym, but may also prohibit anyone from usurping the authorship of their work.

- The right of disclosure: the author and his successors in title have the option of whether or not to make a work public, under the conditions and using the means of exploitation of their choice;

- The right to respect for the work: this relates to the form and spirit of the work. The author may object to the modification, alteration or distortion of the work.

- The right of withdrawal : the author may decide to withdraw the authorisation to use his or her work that he or she has assigned by contract, subject to prior fair compensation of the assignee and if he or she can justify a legitimate reason of an intellectual nature.

The author also has economic rights that allow him to authorize or not the use of his work.

AND BECAUSE WE ARE IN GREECE, SOME PRECISIONS ABOUT THE PERFORMANS RIGHTS IN GREECE :

**GREEK LEGAL FRAMEWORK FOR DANCERS**

In Greece, the legal framework does not protect dancers by individualizing specific laws regarding their copyright.

However, in LAW 2121, which is harmonized with the EU directives on copyright, copyright for artists, creators and performers is guaranteed in a broader context.

Law 2121/1993, therefore, not only protects the author, but also protects the artists.

Intellectual property and related rights are safeguarded by a network of civil, administrative and criminal sanctions as well as preventive measures.

Article 46-Law 2121/1993 defines performers as persons who perform in any way works of the spirit, such as actors, musicians, singers, dancers, …

Performing have the right to permit or not permit :

(a) the recording of their performance or execution on a physical medium,

(b) the direct or indirect, temporary or permanent reproduction by any means and in any form of their performance,

(c) the distribution to the public of the physical medium containing the fixation of the performance, whether by sale or otherwise.

(d) the rental and lending to the public of the carrier of the material bearing the registration of the performance.

(e) the broadcasting by any means, such as electromagnetic waves, satellites, cables, as well as the presentation to the public of the carrier material by means of an unlawful recording of the live performance,

(f) the broadcasting by any means, such as electromagnetic waves, satellites, cables, of their live performance, unless such broadcasting constitutes a retransmission of a lawful broadcast,

(h) to make available to the public, by wire or wireless means, in such a way that any person may have access to the recording on a physical medium of their performance or performance, wherever and whenever he or she chooses. This right shall not be exhausted by any act of making available to the public within the meaning of this Regulation. (Articles 2, 3(2) and (3), 4 of Directive 2001/29).

Thank you so much for your attention.

If you have some questions we will happy to answer by email.

You can send an email to CID contact.

Thank you and enjoy this great dancer international annual Meeting

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