

**WEITNAUER**

a partnership of Attorneys | Tax Advisors | Public Accountants



**Protection of Investments  
in the Cultural Sector**

Final IFP Conference ELSA, Munich, 30.04.2010

# Agenda

**Who we are**

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**Introduction of the Topic**

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## Who we are – Our History

WEITNAUER was founded in 1995 and, since then, has continuously grown from within. Today, WEITNAUER is a partnership of 27 highly qualified and internationally educated lawyers, public accountants and tax advisors and is located in Munich, Berlin and Heidelberg. One of our partners is also qualified as a notary.

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## Who we are – Our Philosophy

There are tasks that are best handled by multi-national, globally acting firms. And there are tasks for which small but internationally oriented, specialized firms offer the maximum benefit to the client.

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Our firm combines the benefits of a small unit with the quality of an excellent and comprehensively oriented group. We solve complex questions and problems from one place.

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# Who we are – Our Focus

## **We support businesses, business owners, and investors**

- in all matters of financing (equity and debt financing)
- in structuring of successions, including M & A
- in commercial and investment disputes
- domestically and abroad

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# Introduction of the Topic – Economical Point of View

## The Importance of the Cultural Sector in the 21. Century

- The so-called “Copyright Industry” (Cultural Sector) achieves in General 3-7 Percentage of the GDP worldwide according to WIPO-Statistics
- The same economical importance of IP in the European Union
- The incomes earned in the Copyright Industry belong to the highest incomes of all economical sectors



strong copyright protection

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# Introduction of the Topic – Technical Point of View

## Technical Innovation

- Internet
- Digital technology – new copy methods in original quality
- DRMs



- Piracy, private copying – uncontrollable
- Right owner lobby to strengthen the copyright protection  
(examples music industry, film industry, book publishers)

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# Introduction of the Topic – the Problem of the Modern Copyright System

## Strong copyright contra new models

### ■ New models:

- Creative commons
- “The answer to the technique is the technique” - DRMs
- New exploitation forms (mp3, interactive music & video stores)
- Statutory licenses (instead of prohibition compensation)

### ■ Solution of the problem

- No general solution
  - Flexibility of users (producers) is requested
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# Definition of the Relevant Terms

## **Cultural Sector or Copyright Industry**

- All branches, which based on works or achievements protected by copyright law

## **Producers or Investors**

- Persons or organizations that produces works, achievements or services in the cultural sector

## **Investments**

- Results of the activity of producers or investors such as works (films, books, CDs, etc.), performances, achievements by actors, singers, etc.

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# Legal Protection of the Investments – the Relating Fields of Law

## Intellectual Property Law

- Copyright law (works, performances – a specific level of creativity and originality is demanded – but no aesthetic requirements)

Main rule = granting licenses and no transfer of rights (exceptions: database, film, commercial works, software)

- Trademark Law (title protection is the most relevant in the cultural sector)

## Competition Law

- Against unfair competition ( protection against the unfair competitors)
  - Protection of performances not protected by copyright law
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# Legal Protection of the Investments – the Problem of the Popularity of the Copyright Protection

## Copyright Law

- “Property Law” – the right owner has a similar position as a real estate owner
- Exclusive rights – protection against everybody (secured for a limited period of time according to the relating statute)
- Imitation is strictly prohibited

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## Competition Law

- “Soft Law”
  - “Inter partes force” – protection against the parties involved
  - Imitation is allowed – principle = freedom of competition
  - No statutory limitation for the period of the protection (actuality of the competition)
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# Interest Conflict of the Market Participants

## Producers

- Strong Protection – extension of the scope and the period of the copyright law
- Profit oriented exploitation

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## Creatives (authors, performing artists)

- The brightest exploitation of the works and achievements for the realistic highest prices, which the consumers are ready to pay

## Commonweal

- The brightest exploitation of the works and achievements for the cheapest price or for free (illegal downloads – the problem originates in the too high prices of CDs)

*Aim of the copyright law to balance these controversial interests*

# Commercial Theatre World – „Cultural Burger“

## Replica Productions („Cultural Burger“)

- A professional musical production is an expensive investment
  - The Producers do not have any neighboring rights such as film producers or sound carrier producers
  - Solution = contractual protection based on the copyright law
  - The producers acquire the rights of the stage creative team (director, set and costume designer, choreographer, and light designer) and sell the whole production as a package deal with the same stage direction, lighting, costume and set design
  - General order of the premiers: London, Broadway, Sydney, Tokyo
  - Local productions will be granted first after a couple of years
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# Protection of TV and Radio Formats

- No copyright protection (famous cases in Germany and Hungary)
- Trademark protection (for the title and logo of the formats)
- Protection of the competition law if an unfair market behavior can be proven

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# Protection of Presenter of Sport Events

- No copyright protection (presenter of sport events are not neighboring right owners)
- Protection of the competition law if an unfair market behavior can be proven
- According to German Law: no “house right“ but protection of performance by the competition law – the “Hartplatzhelden-Case”

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**Thank you for your kind attention!**

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