



Digital Rights Awareness

Episode 4

The Role of Regulators: European Union vs Member States

Script

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How does the law protect music creators, and what level of protection do their works receive?

As briefly illustrated in Episode 1, despite its legal differences and traditions, copyright law aims at providing an incentive and a financial reward to creators. In systems such as the continental-European ones, inspired by the French *droit d'auteur*, this happens as an instrument to protect authors' artistic personalities and their bond with their works. In the logic of common law systems, such as the United States, instead, copyright protection ultimately seeks to promote the progress of arts by securing for limited times to authors the exclusive right to their respective writings.

In this episode, we'll briefly explore the layers of music rights — from international treaties to EU directives, and national laws — and how together, they form the backbone of protection for music creators.

Layers of Copyright Law

Copyright law operates through several *intertwined layers* of legislation. At the top sits international law, defined by treaties, such as the Berne Convention, that set shared standards across countries that ratified these agreements.

Then comes European Union law, which harmonizes national approaches within the EU, mostly to remove barriers and disparities to cross-border exploitation of creative works and the creation of a 'Single Market'.

And finally, national law — where these copyright rules are implemented and enforced, often with important variations, despite the above-mentioned efforts at international and EU level.

Each layer plays a role in defining who counts as a creator, what can be protected, and what rights arise from that protection.

Subject Matters of Protection

When modern copyright law emerged, its focus was relatively straightforward: protecting the business of book publishing from the unauthorised reproduction of books and other literary works. It took some time, even in England, before sheet music—musical compositions in notated form— could likewise be protected as “writings”. In eighteenth-century London, it was Johann Christian Bach—something of a “rock star” of his day—who helped to consolidate the protection of musical works under copyright, through a

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celebrated dispute in which he sued a publisher for exploiting his compositions without permission (1773-1777).

“The words of the Act of Parliament are very large: ‘books and other writings.’ It is not confined to language or letters. Music is a science: it may be written; and the mode of conveying the ideas is by signs and marks. [...] We are of the opinion that a musical composition is a writing within the Statute of the 8th of Queen Anne.” (Bach v. Longman, 98 Eng. Rep. 1274 (K.B. 1777)) (Eng.).

As discussed in Episode 1, technological change has progressively reshaped copyright law. Each innovation required legal adaptation to new forms of music creation and dissemination. The advent of sound recordings and mass media extended the reach of music, making it accessible across distance and to a far wider global audience. In turn, new rights emerged and were gradually incorporated into the legal framework.

Today, the law recognizes three main subject matters for rights in the music sector:

- First, musical works — the (abstract and often notated) compositions themselves.
- Second, performances — by instrumentalists, singers, or other performing artists.
- And third, sound recordings — the produced tracks, engineered, owned and managed by record companies.

All three subject matters enjoy protection under international, EU, and national law — though the balance between them has shifted over time.

The International Framework

At the international level, the cornerstone is the 1886 Berne Convention. Among its principles, two are of fundamental importance to understand the logic of cross-border, supranational protection of authors' rights:

- The first is national treatment — the idea that foreign authors must receive the same protection as the nationals of the country where protection is sought.
- The second is automatic protection — authors' rights shall subsist independently of registration or other formalities; this means that a work is protected from the moment it is created.

As regards the so-called ‘neighboring’ rights, in 1961 the Rome Convention laid the foundations for the protection of *performers*, *producers of phonograms*, and *broadcasters* and their respective works.

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Later agreements, such as the 1994 TRIPS Agreement and the 1996 WIPO “Internet” Treaties - namely: the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty - brought copyright rules into the digital age. They extended protection to new categories of rights, most notably the right of communication to the public, which includes the right of making works available to the public interactively—and also drew new jurisdictions and legal traditions into the international copyright framework.

Together, these treaties constitute a global baseline — a shared foundation of minimum rights that nearly all countries in the world agree to respect.

The European Union Layer

Within the European Union, copyright law has been gradually harmonized through a series of directives. Since the early 1990s, the goal has been to reduce disparities between Member States and ensure the free movement of goods and services — including music.

The 2001 Information Society Directive (Directive 2001/29) defined the core exclusive rights — reproduction, communication to the public, and distribution — while setting out a list of exceptions and limitations. It also introduced rules on *technological protection measures*, acknowledging how technical measures such as digital rights management systems, paywalls and geo-blocking systems can now control access to works.

Despite these advances, *two important areas remain outside EU harmonization*. The first is the right of adaptation or transformation — the right to authorize or forbid *derivative works* or *modifications*. Its scope still depends entirely on national law. And the second concerns moral rights — those *non-economic* rights that protect the personal link between authors and their works. These include – traditionally - the *right of attribution* — namely: the right of an author to be identified and credited for his or her work — and the *right of integrity* — which is the right to object to any *distortion, mutilation, or alteration* that could harm the author’s honor or reputation. Both these rights are established in Article 6bis of the Berne Convention, although in Europe their protection remains diverse and rooted in national traditions.

Interestingly, in 2011, the European Union extended the term of protection for sound recordings from 50 to 70 years (Directive 2011/77). This reform benefited both record companies and performing artists, while also encouraging greater transparency and data exchange regarding recording information and metadata. The goal was to ensure that 20% of the additional revenues generated by the term extension would be transferred to so-called “session musicians” — performers who are typically paid a lump sum rather than receiving royalties like featured artists.

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More recently, the 2019 Digital Single Market Directive (Directive 2019/790) addressed transparency, fair remuneration, and contract adjustment rights — marking a step toward fairer treatment for creators in the digital economy.

The National Layer

Despite this harmonization, *copyright remains fundamentally territorial*.

Each Member State must *transpose* EU directives into its national law — and we know that those transpositions can differ. Differences appear in how rights are enforced, how collective management operates, or how exceptions are applied. This diversity reflects Europe's cultural richness — but it also poses challenges for a *truly integrated digital single market for music*.

Conclusion and Looking Ahead

So, to sum up:

- The law protects *different layers of creativity*: compositions, performances, and recordings.
- It does so through *interconnected frameworks*: international treaties, EU directives, and national laws.

These frameworks constantly seek to balance *protection and access*, adapting to each new technological shift. But enforcement — and much of the real decision-making — still happens *at the national level*, creating friction in an increasingly global music ecosystem.

If you haven't yet watched our first episode, *Author's Rights as a Story of Technological Change*, we invite you to explore it to better understand how this historical journey began.

In our next episode, we'll explore how these legal structures interact with the *digital platforms* that now mediate nearly every aspect of music creation, distribution, and listening.