



# USE OF MUSICAL WORKS IN TELEVISION PRODUCTS

*Dimitrina Papagalska*\*

## Introduction

The television and music industries are creative industries which characteristics presuppose the existence and maintenance of various aspects of business relations between them. From the television industry's point of view, these relations can be seen in the creation of its specific creative products - television programs, shows, series and auto-commercials. The main creative product of the activity of the television operators<sup>1</sup> - the television program, has different varieties according to its profile. For example, there are programs that are polythematic, film, sports and music. Of all the programs created by Bulgarian television operators, a total of 21 are musical<sup>2</sup>. They use unaltered musical works for the purpose for which they were created (for example music video, lyric video, etc.).

TV shows are also divided into different types according to the creative content in them. They can be informational, educational, entertaining, children's, musical and others. In 2019, a total of 855,745 hours of television shows were broadcasted on Bulgarian television, of which 119,010 hours (or almost 14%) were musical ones<sup>3</sup>. The presence of musical works in television shows is not limited to musical ones and can be observed in other varieties, and regardless of the type of broadcast, the musical work may be unchanged, specially created for the purposes of the show or synchronized. There is no doubt about the presence of musical works in other varieties of television products - television series and auto-commercials for series and shows. They either create a piece of music specifically for the purposes of the series / show, or the so-called

synchronizing of a musical work from the already known repertoire.

Depending on whether the broadcaster wants to use the musical works in the same form or wants to synchronize them with some of its products, it needs permission from the relevant right-holders, which it can generally obtain in the following ways:

- personally by them;
- by the subjects for collective management of rights, which manage the rights for broadcasting, transmission and retransmission of the musical works in unchanged form on the respective territory;
- by the music publishers, who manage the rights for synchronization of the respective right-holders for the territory on which the television operator carries out its activity.

A specific feature of the TV show, the TV series and the auto-commercials of such is that they most often reach the end users through their inclusion in the program of the TV operator. The development of technology and the facilitated access to the Internet strengthen the desire of users to access these products at a time and place of their choice through various digital platforms. The channels chosen by the television operator for distribution of these products are one of the factors in forming the price at which the television operator, which creates and / or distributes them, acquires rights to use the musical works in them. For example, in the case of distribution of a television product and through digital platforms, the cost of permission to include the musical work in it is usually higher than in cases where the television product is distributed by the conventional method - inclusion in the television program.

## Use of the musical work in their original form

In cases where the television products use musical works in their original form, it is necessary

<sup>1</sup> Television operator - provider of television linear media services based on a program scheme. Media service provider - a person who bears editorial responsibility for the choice of the content of the media service and determine the manner in which it is organized (Article 4 of the RTA).

<sup>2</sup> According to [predavatel.com](http://predavatel.com)

<sup>3</sup> According to NSI data

\* Assist. Dr. Dimitrina Papagalska

Institute of Intellectual Property and Technology Transfer, UNWE



for the television operator to conclude a contract with the organizations for collective management of rights (OCMR) Musicautor<sup>4</sup> and Prophon<sup>5</sup>. Under these contracts, the operator receives the non-exclusive rights to use all protected musical and / or literary works related to music included in the repertoire of Musicautor, which have already been disclosed or which will be disclosed during the term of the contract, as well as and the non-exclusive rights to use sound recordings, recordings of musical audiovisual works and, accordingly, the performances contained therein, included in Prophon's repertoire, which have already been disclosed or which will be disclosed during the term of the contract. The operator may broadcast and transmit the above works only to the needs of the specific television program, in case that it does not change the musical work itself and therefore owes remuneration to both OCMRs according to the tariffs approved by the Ministry of Culture<sup>6</sup>.

In addition to the OCMR, other entities for collective management of rights, according to changes in the Copyright and Related Rights Law from 2018, are the so-called independent rights management companies (IRMC). They also manage the rights of their members on a collective basis, but are commercial companies and, unlike the OCMR, are not controlled by or owned by the right-holders. At present, the IRMCs registered with the Ministry of Culture perform only activities related to the public performance of music and cannot provide television operators with permission to broadcast and transmit the musical works to the right-holders they represent.

### **Synchronization of a musical work in a television production**

Synchronization is expressed in the combination of one work, subject to copyright or part of it, with another work, also subject to copyright. In this case it is a question of synchronization of a musical work<sup>7</sup> in a TV show or

series, as well as in the auto-commercials of such. For this purpose, the explicit consent of the right holders on the respective musical work is required. The right holders do not assign these rights to Musicautor and Prophon, due to which even if the television operator has a contract with these OCMR, it cannot acquire rights for synchronization of the selected musical works by virtue of these contracts. This consent can be obtained by the televisions individually - from the respective right-holders over the musical work they wish to use or through the mediation of the so-called music publishers. The latter are precisely the organizations to which the right-holders cede rights for synchronization of their works. Depending on the type of the selected piece of music, the synchronization can be of a piece of music from the so-called known repertoire or from catalogs for production music.

### **Synchronization of a musical work from the known repertoire**

Production music includes musical works that are intended to be synchronized with other creative products, incl. even other musical works. Characteristic of productive musical works is their short duration and the absence of vocals. These works are classified in catalogs containing hundreds / thousands of titles and categorized according to the musical instruments used in them, tempo, style, genre, mood, associations that provoke, etc., which helps TV operators to choose such criteria according to predefined criteria musical works that best meet the programmatic need. The right-holders of these works are represented by the music publishers, who mediate between them and the television operators in negotiating the terms of use of the musical works. Television operators use these works most often for the so-called "jingles" and "hats". The jingles are very short and can be used repeatedly in episodes of TV shows, in commercials and more. The "hats" stand out with a longer duration and the difficulty of reminding or prompting the audience what is to be broadcast on the television program.

Compared to the use of music from the known repertoire, the use of production music by the television operator has its advantages. These can be:

- possibility to obtain an exclusive right to use the musical work in a certain territory;
- the lower price of the license;
- saving time and resources due to a simplified

<sup>4</sup> Musicautor is a non-profit collective management association for composers, authors of literary works related to music, and music publishers for the collective management of their copyrights.

<sup>5</sup> Prophon is an association for collective management of related non-profit rights of producers of sound recordings and music videos and performers.

<sup>6</sup> Musicautor's tariff: <https://bit.ly/3cGtsG5> ;

Prophon's tariff: <https://bit.ly/3n2oqsj>

<sup>7</sup> An exception is the synchronization of a folklore work, in which it is not possible to identify the right-holders of intellectual property on the original work.



procedure for obtaining a permit and negotiating the terms of the contract with the right holders, etc.

Upon concluding the respective contract, the television operator receives the right to use the production music according to the conditions in it. Specific for the Bulgarian television industry is the possibility of concluding contracts with music publishers for the exclusive / non-exclusive use of entire catalogs of production music, which provides a limited but diverse resource in case of need for new musical works for inclusion in television products.

### **Conclusion**

In order to function in conditions of mass consumption of creative products and to maintain its competitiveness, as well as the high standards of its television products, the television operator includes in them other objects of intellectual property. In practice, there are various possibilities for using musical works in television products - unchanged for the purpose for which they were created or by synchronizing them in the variety of other creative products that the operator includes in its program. The right-holders of these works deserve their due remuneration for the respective types of use, which can be obtained directly from them or through the mediation of organizations to which the right-holders have ceded for management the respective categories of rights. The timely settlement of these rights is crucial both for maintaining the good image of the respective television operator and for reimbursing the indirect contribution that authors and holders of related rights undoubtedly have to the usefulness that the television product brings to its end users.

### **Bibliography:**

1. Copyright and Related Rights Law, (SG, issue 56, June 20<sup>th</sup>, 1993.
2. Radio and Television Law, (SG, issue 138, November 24<sup>th</sup>, 1998.