**Darstellung der urheberrechtlichen Schutzfristenregelungen für Werke der Musikkunst nach französischem Urheberrecht, insbesondere unter Berücksichtigung kriegsbedingter Schutzfristverlängerungen sowie der Harmonisierung der Schutzfristenregelungen innerhalb der Europäischen Union gemäß RL 93-98/EWG/des Rates v 29.10.1993 (Stand 25.2.2021)**

**Grundsätzlich** gilt nach **französischem Urheberrecht** (heute) die Regel, dass Werke für einen Zeitraum bis **70 Jahre** nach dem Tod des Urhebers geschützt sind. Bei in Miturheberschaft geschaffenen Werken ist ausschlaggebend der Tod des letztverstorbenen Miturhebers; Sonderregelungen hinsichtlich des Anknüpfungspunktes für die Siebzigjahresfrist gibt es für Filmwerke sowie sonstige kollektive Werke und pseudonyme/anonyme Werke.

Um die Zeiträume, während derer die Auswertung von urheberrechtlich geschützten Werken in Folge kriegsbedingter Ereignisse sehr stark eingeschränkt oder de facto verunmöglicht war, zugunsten der Urheber zu kompensieren, wurden in fast allen europäischen Urheberrechtsordnungen sogenannte **kriegsbedingte Schutzfristverlängerungen** eingeführt.

Unter anderem auch in **Österreich**, wo durch die UrhGNov 1953 eine **einmalige siebenjährige Verlängerung** der damals für Werke grundsätzlich geltenden 50-jährigen Schutzfrist für die zu diesem Zeitpunkt nach den damals geltenden Regelungen noch geschützten Werke (aller Kategorien) eingeführt wurde. Diese Schutzfristverlängerung galt daher grundsätzlich für Werke von Urhebern, die am 14. Oktober 1953 (= Zeitpunkt des Inkrafttretens dieser Novelle) noch geschützt waren, deren Urheber also nach dem 31. Dezember 1902 gestorben waren. Weitere Voraussetzung für diese Schutzfristverlängerung war jedoch, dass das betreffende Recht bereits vor dem 1. Jänner 1949 entstanden war, und damit eine (zumindest theoretische) Beeinträchtigung der Verwertung im Zusammenhang mit dem Zweiten Weltkrieg oder den 1. Nachkriegsjahren möglich war.

In **Frankreich** waren die diesbezüglichen **Regelungen** jedoch erheblich **komplexer, unübersichtlicher** und damit auch **unklarer**.

Zunächst ist zwischen **zwei kriegsbedingten Schutzfristverlängerungen**, die übrigens für alle Werkkategorien galten, zu unterscheiden. Die Verlängerung aus Anlass des 1. Weltkrieges bezog sich auf Werke, die vor dem 31. Dezember 1920 veröffentlicht wurden und deren Schutz am 03. Februar 1919 noch bestand. Hier wurde die Schutzfrist um 6 Jahre und 115 Tage verlängert.
Von der Schutzfristverlängerung aus Anlass des 2. Weltkrieges sind Werke betroffen, die zwischen dem 31. Dezember 1920 und dem 01. Jänner 1948 veröffentlicht wurden und am 13. August 1941 noch geschützt waren. Deren Frist wurde um 8 Jahre und 120 Tage verlängert.
In **besonderen Fällen** gab es dann auch noch eine **30-jährige Schutzfristverlängerung** für Urheber, die „für Frankreich den Heldentod" gestorben sind (wie zB der (Militärpilot und Autor Saint-Exupery).

1993 wurde dann die **Richtlinie der Europäischen Union 93/98/EWG** erlassen – die bis zum 1. Juli 1995 von den Mitgliedstaaten in ihr jeweils nationales Gesetz umzusetzen war - und mit der eine **Harmonisierung der Schutzfristen im Binnenmarkt** angestrebt wurde. Darin war vorgesehen, dass die Schutzdauer des Urheberrechts an Werken der Literatur und Kunst **das Leben des Urhebers und** darüber hinaus **70 Jahre nach seinem Tod** (bzw. Tod des letzten Miturhebers) umfasst, unabhängig von dem Zeitpunkt, zu dem das Werk erlaubterweise der Öffentlichkeit zugänglich gemacht worden ist.

Art 10 Abs 1 dieser Richtlinie sah jedoch vor, dass die **neue 70-jährige Schutzfrist nicht** dazu führen soll, dass **bereits bestehende Verlängerungen verkürzt werden**. Dies ist im Hinblick auf die Urheber konsequent, da sie durch eine nachträgliche Reduktion der ursprünglich kriegsbedingten Schutzfristverlängerungen wieder schlechter gestellt werden würden, was natürlich nicht Ziel der Richtlinie war.

In **Frankreich** kommt **verkomplizierend** hinzu, dass die **Schutzfristen für Werke der Musikkunst** im Verhältnis zu jenen für andere geschützte Werkkategorien (historisch) nochmals **besonders geregelt** sind. Insbesondere kam es hier schon vor dem 1. Juli 1995 zu einer Schutzfristverlängerung von 50 auf 70 Jahre. Diese Sonderregelungen haben Anlass zu zahlreichen Diskussionen auf rechtswissenschaftlicher Basis, aber auch in Bezug auf verschiedene Gerichtsentscheidungen, geführt.

**Im Ergebnis und kurz zusammengefasst** bedeutet dies, dass **nach französischem (Urheber)Recht** zum Zeitpunkt des Inkrafttretens der europäischen Richtlinie über die Harmonisierung von Schutzfristen (= 1.7.1995) allenfalls infolge der spezifischen französischen kriegsbedingten Schutzfristverlängerungen noch laufende **Schutzfristen für bestimmte Werke der Musikkunst** nicht auf 70 Jahre nach dem Tod des Urhebers gekürzt werden, sondern **je nach den konkreten Umständen des Einzelfalles auch länger als 70 Jahre** laufen können. Dies gilt **allerdings nur in Bezug auf jene Nutzungshandlungen** die in oder ausgehend vom **französischen Territorium** (einschließlich der Überseeterritorien ordgl)) stattfinden.

**Im Detail** darf ich dazu auf die nachfolgend angeführte und von mir gemeinsam mit französischen Kollegen in Paris ausgearbeitete (englische) gutächtliche Stellungnahme verweisen, wobei ich festhalte, dass die von den französischen Kollegen zum französischen Recht getroffenen Ausführungen von mir letztlich ungeprüft übernommen werden mussten.

1. The main rules governing in France the period of protection of works of art, including

musical compositions, by copyright are set in Articles L.123-1 and sbsqt of the French Intellectual Property Code, which notably provides as follows:

Article L.123-1:
*"The author enjoys, during his lifetime, the exclusive right to exploit his works in any form whatsoever and to make a pecuniary profit from it.*
*Upon the death of the author, this right shall continue to the benefit of his successors in title for the current calendar year and the seventy years that follow."*

Articles L.123-2 to L.123-3 adapt the starting point of the seventy years period to works of joint authorship, audiovisual works, pseudonym works, anonym works and collective works.

Article L.123-8:
*"The rights granted by the law of 14 July 1866 on the rights of heirs and successors in title of authors to the heirs and other successors in title of authors, composers or artists are extended for a time equal to that which elapsed between 2 August 1914 and the end of the year following the day of the signing of the peace Treaty, for all works published before the latter date and not fallen into the public domain on 3 February 1919."*

Article L.123-9:
*"The rights granted by the aforementioned law of 14 July 1866 and Article L 123 -8 to the heirs and successors in title of authors, composers or artists are extended for a time equal to that which elapsed between 3 September 1939 and 1st January 1948, for all works published before this date and not fallen into the public domain on 13 August 1941."*

Article L.123-10:
*"The rights mentioned in the preceding Article are extended, in addition, for a thirty years period when the author, composer or artist has died for France, as shown on the death certificate.*
*In the event the death certificate must not be drawn up or transcribed in France, a decree of the Minister of culture may extend the benefit of the additional thirty-year extension to the heirs or other successors in title of the deceased; such decree, issued after consultation with the authorities referred to in Article 1 of the Ordinance n°45 -2717 of 2 November 1945, may be issued only in cases where the words "death for France" should have appeared on the death certificate if it had been drawn up in France."*

Therefore, the principle is a protection for the whole life of the author plus 70 years as from January 1st of the year following his death.

Additional periods of protection may be granted in the circumstances provided by Articles L.123-8

to L.123-10 of the French Intellectual Property Code quoted above, i.e. extension by reason of the World War 1 and/or 2 and in the case where the author is dead for France.

The generalization of the 70 year period of protection provided by Article L.123-1 of the French Intellectual Property Code was introduced by the law n°97-283 of 27 March 1997, which has notably transposed in France the EU Directive n°93-98 of 29 October 1993 harmonizing the term of protection of copyright and certain related rights. Such generalization entered into force as from 1st July 1995 since the Directive n°93-98 provided that the Members States had to transpose its provisions by 1st July 1995 at the latest.

Although the law n°97-283 of 27 March 1997, did not abrogate Articles L.123-8 and L.123-9 of the French Intellectual Property Code, the French Supreme Court has decided, on the basis of the provisions of the EU Directive n°93-98, to restrict the scope of application of such articles in two decisions rendered in 27 February 2007.

The French Supreme Court has itself commented on such decisions in its 2007 report. In its comments the French Supreme Court explained that, on the one hand, according to the EU Directive n°93-98 the period of protection of the works of arts within the European Union must be harmonized and set to 70 years but, on the other hand, recital 10 (in fact recital 9) of such Directive also states that the "*harmonization of the terms of protection of copyright and related rights cannot have the effect of reducing the protection currently enjoyed by rightholders in the Community*".

In such context the French Supreme Court considered that the French judges must determine whether by 1st July 1995 (ultimate date of transposition of the Directive n°93-98), the right holders of the author could claim for a protection above 70 years. If not, only the period of protection of 70 years as from the death of the author applies. And in the event of a positive answer, the longer period of protection applies.

In its report, the French Supreme Court expressly mentioned that such longer period is limited to two hypothesis:

- Musical works for which the 70 years period of protection applies since 1st January 1986 (date of entry into force of the law n°85-660 of 3rd July 1985), provided that the right holders of the author were entitled to benefit from war extension(s) on 1st July 1995.
- Works of art created by authors dead for France since with the extension of 30 years provided by Article L.123-10 of the French Intellectual Property Code, the period of protection exceeded 70 years.

According to the information given by our French colleagues they did not find any more recent decisions of the French Supreme Court. Therefore, to their knowledge, the current position of French Courts is still the one expressed by the French Supreme Court in its decisions of 27 February 2007.

2. Regarding the application of the war extensions to works of music when the period of protection of such works of art was increased up to 70 years, i.e. as from 1st January 1986 further to the law n°85-660 of 3rd July 1985, comments or decisions on such issue are extremely limited.

It is to be noted that the increase of the period of protection for musical works from 50 to 70 years was not provided in the first version of the draft law adopted by the French National Assembly but was added by the French Senate.

In a report of 20 March 1985, issued on behalf of a special committee of the Senate, it was explained that such extension limited to works of music aimed to help French musical edition with regard to European competitors in State members where the period of protection was longer than in France.

Such report also expressly stated that the increase of the term of copyright protection would not apply to musical works which were already free of rights (fallen into the public domain) when the law would enter into force, i.e. 1st January 1986.

In other words, in the opinion of my French cooleagues, what has to be determined is whether the musical works at stake had fallen into the public domain by 1st January 1986. Should such musical works be protected by copyright on 1st January 1986 either because the 50 year period of protection had not elapsed or due to a World War extension, they would be eligible to the benefit of the new period of protection provided by the law of 3rd July 1985, i.e. the musical works would be protected for an additional period of 20 years.

The law of 3rd July 1985 which has set a new statutory term of protection for musical works has notably amended Articles 21 to 23 of the law n°57-298 of 11 March 1957 related to copyright then codified in constant law, in 1992 by Articles L.123-1 to L.123-3 of the French Intellectual Property Code. However, the law of 3rd July 1985 had left unchanged World War 1 and World War 2 extensions, respectively introduced by the law of 3rd February 1919 and the law n°51-1119 of 21 September 1951 then codified in constant law by Articles L.123-8 and L.123-9 of the French Intellectual Property Code. Therefore, in the opinion of my French colleagues, there can be no absorption of the unchanged World War 1 and World War 2 extensions by the new 70 year period

of protection for musical works set by the law of 3rd July 1985.

To this respect, the situation is different to the one resulting from the adoption of the law n°97-283 of 27 March 1997 which had to be interpreted in accordance with the EU Directive n°93-98 of 29 October 1993 harmonizing the term of protection of copyright and certain related rights.

Regarding the question of territorial application of those French legal findings French war extensions should apply for any use of works of music in the territory of France or having its origin in such territory in accordance with the French Intellectual Property Code, which notably provides as follows:

Article L.122-1:
*"The right of exploitation belonging to the author includes the right of representation and the right of reproduction."*

Article L.122-2:
*"The representation consists in the communication of the work to the public by any process, and in particular :*

*1° By public recitation, lyrical performance, dramatic representation, public presentation, public projection and transmission in a public place of the televised work;*

*2° By television broadcasting.*

*Television broadcasting means the dissemination by any telecommunication process of sounds, images, documents, data and messages of any kind.*

*The transmission of a work to a satellite is considered to be a representation".*

Article L.122-2-1:
*"The right of representation of a work broadcast by satellite is governed by the provisions of the present code as soon as the work is transmitted to the satellite from the national territory."*

Article L.122-2-2:
*"The provisions of the present code shall also apply to the right of representation of a work broadcast by satellite from the territory of a State which is not a member of the European Union and which does not provide a level of copyright protection equivalent to the one guaranteed by the present code:*

*1° When the uplink to the satellite is made from a station located on the national territory. The rights provided for in this code may then be exercised against the operator of the station;*

*2° When the uplink to the satellite is not carried out from a station located in a Member State of the European Union and when the transmission is carried out at the request, on behalf or under the control of an audiovisual communication company having its principal place of business on the national territory. The rights provided for in the present code may then be exercised with respect to the audiovisual communication company."*

Wien, 9.4.2021