



INTERNATIONAL ASSOCIATION  
OF YOUNG LAWYERS



[www.aija.org](http://www.aija.org)

**Half Year Conference 2017**  
**GIRONA**



INTERNATIONAL ASSOCIATION  
OF YOUNG LAWYERS

# Guess what?

## General overview on audio-visual rights out of cinema

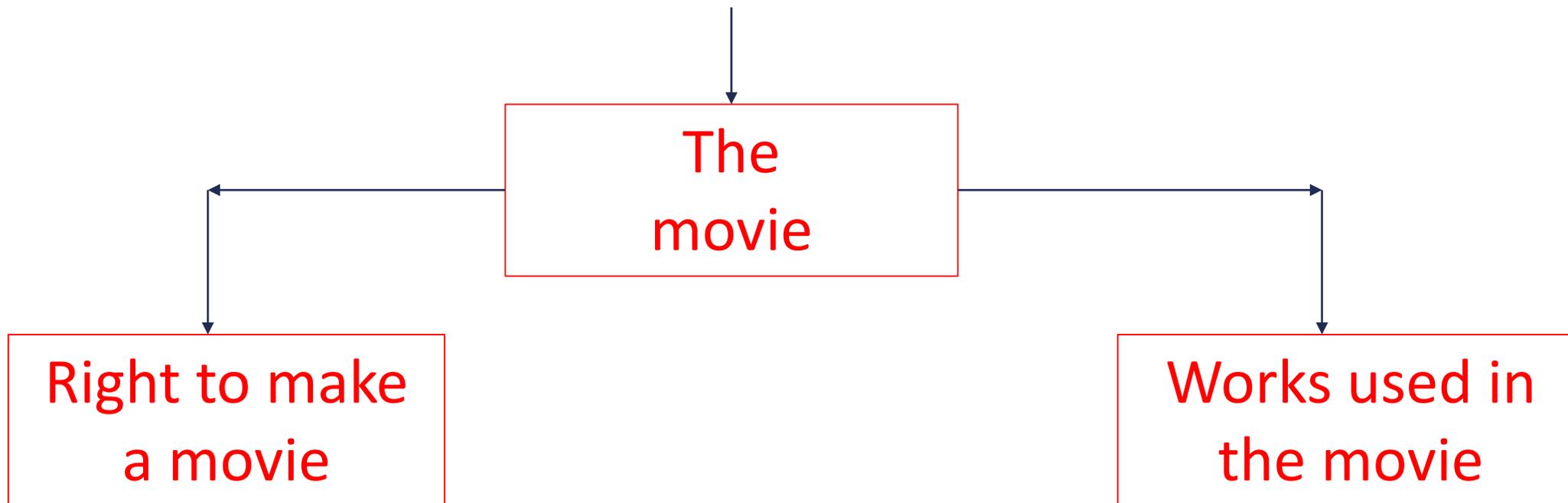
Dr. Stephan Dittl



## Introduction: An example

- The Phantom of the Opera  
<http://publicdomainreview.org/collections/the-phantom-of-the-opera-1925/>
- The Snows of Kilimanjaro  
<http://publicdomainmovies.net/movie/the-snows-of-kilimanjaro>
- Tom Sawyer  
<https://www.30sto50sjournal.com/gemeinfreie-filmklassiker/>

# Copyrights



## Right to make a movie (1)

- Independent pre-existing work: novel



- Work made for the movie: film script
- Both kind of works are protected separately/independently

## Right to make a movie (2)

- Usually not protected: The idea

Regional Court Cologne, 2004/07/07, 28 O 303/04

- The idea of making a disaster movie about a new ice age is not protected
- The copyrights of a novel author are not infringed by a script and a movie about the same topic

## Works used in the movie

- Independent works: source music
- Works made for the movie: score music
- Connection between music and movie?
- Further works:



## The movie

- Work protected by copyright
- Neighbouring rights:
  - performers
  - producer
  - producer of moving pictures  
(example: broadcasting of sport events)

## The producer

- own neighbouring right
- collects copyrights and neighbouring rights of all other parties involved: contracts!
- in cases of doubt, exclusive rights are granted to the producer (Germany)
  - ↳ but the copyrights in the works used in the production remain unaffected



## Rights of use

- reproduction (video/audio recording medium)
- distribution of video/audio recording mediums: DVDs
- presentation (by technical devices): cinema
- broadcasting/retransmission: TV, internet livestreams
- making available to the public: video on demand (streaming)

# International Copyright Treaties (1)

- Berne Convention (1)
  - Art. 2: "(1) The expression “literary and artistic works” shall include ... cinematographic works ..."
  - Art. 4: "The protection of this Convention shall apply, even if the conditions of Article 3 are not fulfilled, to: (a) authors of cinematographic works the maker of which has his headquarters or habitual residence in one of the countries of the Union; ..."

## International Copyright Treaties (2)

- Berne Convention (2)
  - Art. 7: "(2) However, in the case of cinematographic works, the countries of the Union may provide that the term of protection shall expire fifty years after the work has been made available to the public with the consent of the author, or, failing such an event within fifty years from the making of such a work, fifty years after the making."

## International Copyright Treaties (3)

- Berne Convention (3)
  - Art. 14: "(1) Authors of literary or artistic works shall have the exclusive right of authorizing:
    - (i) the cinematographic adaptation and reproduction of these works ..., and the distribution of the works thus adapted or reproduced;
    - (ii) the public performance and communication to the public by wire of the works thus adapted or reproduced."

## International Copyright Treaties (4)

- Berne Convention (4)
  - Art. 14 bis: "(1) Without prejudice to the copyright in any work which may have been adapted or reproduced, a cinematographic work shall be protected as an original work.  
(2) (a) Ownership of copyright in a cinematographic work shall be a matter for legislation in the country where protection is claimed ..." (exceptions)

## International Copyright Treaties (5)

- Universal Copyright Convention
  - Art. 1: "Each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in ... cinematographic works, ..."
- TRIPS Agreement
- WIPO Treaty on Audiovisual Performances
  - only for performers (actors, singers, etc.)



INTERNATIONAL ASSOCIATION  
OF YOUNG LAWYERS

# Thank you !

Dr. Stephan Dittl

Friedrich Graf von Westphalen & Partner mbB  
Kettenhofweg 1  
60325 Frankfurt am Main (Germany)

[stephan.dittl@fgvw.de](mailto:stephan.dittl@fgvw.de)

Twitter: @SDittl

Phone: +49 69 7191890-16



**FRIEDRICH GRAF VON WESTPHALEN**  
& PARTNER mbB | RECHTSANWÄLTE



[www.aija.org](http://www.aija.org)