140 YEARS LATER, LOOKING AHEAD

# WHOSE RIGHT IS COPYRIGHT?

OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

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## QUESTIONNAIRE

## AUSTRALIA

Prof William van Caenegem, Bond University, with Prof Sam Ricketson, University of Melbourne.

## I. INITIAL OWNERSHIP [SESSION 2]

A. To whom does your country's law vest initial ownership? (Please indicate all that apply.)

1 — The author (human creator) of the work

a. Does your country's law define who is an author?
The term author is not statutorily defined in the Copyright Act 1968 (Cth) ('the Act'), apart from a brief reference in s 10(1) relating to photographs: '***"author"*** *in relation to a photograph, means the person who took the photograph*.' In other instances, whether a person is an author or co-author of an artistic, literary, dramatic or musical work is to be answered on the basis of the cases. Generally speaking, these recognise that a person must make an authorial contribution to the expression of the work in a particular material form. Contributing ideas or information is not sufficient, and contributing only technical skill in recording a work in material form is also not sufficient. Who is an author will be determined in line with the nature of the work, be it by contributing literary expression, visual expression, aural expression or the representation of dramatic developments in a particular form of expression.
In terms of neighbouring rights (films, sound recordings, broadcasts and published editions of works) the Act determines that the owner of the copyright is the 'maker' of the 'subject matter other than works' (the statutory terminology used for 'neighbouring rights'). A maker is not required to make an authorial or original contribution to the making of the subject matter, but a practical or organisational one. The maker of a film is what is commonly known as the producer (the party, either a natural person or a legal person, who made the arrangements necessary to make the film); the maker of a sound recording is the owner of the physical master-recording; broadcast rights are owned by the licensee who makes the broadcast; and publishers are the owners of rights in the published edition of a work (which coexists with copyright in the published work as such as the case may be). Performers whose performances are recorded in sound recordings are co-owners of the copyright in the sound recording. These statutory rules may be varied by contract.

b. For joint works (works on which more than one creator has collaborated), does your law define joint authorship? What is the scope of each co-author's ownership? (may joint authors exploit separately, or only under common accord)?
The Act defines a work of joint authorship as a work 'that has been produced by the collaboration of two or more authors and in which the contribution of each author is not separate from the contribution of the

other author or the contributions of the other authors' (sec 10). Two core elements are required: that the contribution of each author does not amount to a separate work (thus, an opera usually has two authors, the person who composed the score and the person who wrote the libretto, and is not considered a work of joint authorship); and that the multiple authors have collaborated in the authoring of the work of joint authorship. The collating of two separately made works into one would therefore not result in a work of joint authorship: collaboration between the alleged joint authors is required. It is also necessary that each joint author has contributed something by way of original authorial expression to the joint work: contribution of ideas, or of a technical skill in recording a work, for example, by acting as a scribe or mere amanuensis, does not make that person a joint owner of copyright in the resulting work. Joint authors are joint owners of the copyright, according to the Act. Although every owner must obtain the consent of the other joint author(s) to exercise exclusive rights, they can independently assign their share of the copyright. Joint authors own copyright in equal shares unless they have agreed differently and each joint author (or owner) can independently bring an action for infringement.

2 — Employers

a. Under what conditions, e.g., formal employment agreement, in writing and signed? Creation of the work within the scope of employment? Whether an author is an employee or an independent contractor is determined by principles of labour law, which requires the consideration of various indicia, the existence of a formal agreement or a written agreement being one. If an author is an employee bound by an agreement of service or apprenticeship the employer will own copyright in works created by the author 'in pursuance of the terms of his or her employment' (sec 35(6)). The courts tend to take a strict view in this regard: if it is a duty of the author under the contract of service to create works, then the employer will own the copyright in those works. However, simply making a work *while employed* does not entitle the employer to ownership of the copyright in the work: creating the work must have been within the course of the employee's employment. These principles are subject to variation by contract, so the contract of employment can stipulate that the author-employee will own copyright. The Act also provides that where a person is employed as a journalist, then unless the contract of employment specifies otherwise, the employee-author will retain the exclusive right of reproduction in a book (as opposed to publication in the newspaper, journal etc), and for the purpose of reprographic statutory rights compensation.

3 — Commissioning parties

a. All commissioned works, or limited to certain categories?
As a general rule, where a work is made for another person in exchange for valuable consideration, and there is no employment relationship between the two parties, the commissioned author owns the copyright in the work. This can be varied by agreement, and there is one statutory variation: where a person makes an agreement with another person (the author) for the taking of a photograph for a private or domestic purpose, the painting or drawing of a portrait or the making of an engraving by the other person (the author) then the commissioning party owns the copyright in the resulting work. However, if the person who paid for the making of the portrait etc made the limited purpose for which the work was required known, then the author can restrain the doing of any act by the commissioning party that falls outside that purpose (sec 35(5) – a kind of primitive moral rights protection). Again, these provisions can themselves be varied by contract and in certain circumstances courts may imply a condition into the agreement requiring the transfer of rights.

b. Under what conditions, e.g., commissioning agreement, in writing and signed by both parties?
The law requires the existence of an agreement between the parties (whether employment or commissioning) for the statutory provisions to apply. Consideration (a salary normally) is implicitly required for any contract of employment to exist. In the case of the commissioning of a work by another party (the author), the Act requires the existence of an agreement and additionally that the agreement be made 'for valuable consideration'. In other words, if there is no agreement, and/or no consideration for the making of the work, then the party who has requested its making has no copyright rights in the work, unless equitable considerations arise under which courts may find that the author is under an obligation to transfer the copyright to the assignor, for example, where some relationship of trust arises or where an obligation to assign may be inferred from a course of past conduct.

4 — The person or entity who takes the initiative of the work's creation (e.g. Producers; publishers) of certain kinds of works, e.g., audiovisual works; collective works

a. scope of ownership of, e.g. all rights, or rights only as to certain exploitations; what rights do contributors to such works retain?
Where works of authorship are concerned, the author or co-authors own copyright with very few limitations. Persons who take the initiative for the creation of a work by an author will have rights in resulting copyrights in accordance with Par 3 above. The concept of a collective work, as in the

case of an encyclopaedia or dictionary, has no legal implications in Australia: the term is not present in the Act (although it did under earlier enactments). Such a work would be referred to as a compilation and compilations if original are recognised as literary works in the Act (sec 10). An opera might be considered a collective work in ordinary parlance, but in copyright terms under Australian law nothing turns on this. An opera consists of two separate works (a literary and a musical work) often with different authors, and thus different ownership of copyright by virtue of the Act.

Audiovisual works are not a statutory category either: the subject matter of neighbouring rights is either a sound recording or a cinematograph film, and the soundtrack of a film is not a sound recording (unless it was separately recorded). Generally, the 'makers' of sound recordings and films own all the copyright in those subject matters; the term 'maker' incudes both natural and corporate persons. However, in the case of sound recordings an unusual situation exists in Australia: according to sec 22, the makers of a sound recording of a live performance include not only the owner of the record on which the recording was made (the owner of the 'master tape' or 'matrix') but also 'the performer or performers who performed in the performance'. Therefore, unless varied by contract, if a sound recording is made of a band performing a song, all the performers (instrumental and vocal), and the conductor will jointly own copyright in the sound recording with the owner of the master tape (usually the 'label' or record company). Normally, this complexity will be avoided by a contractual arrangement that places the whole of the copyright in the sound recording in the hands of the maker, ie the record label.

There are no statutory limitations on the rights or forms of exploitation that each of the parties (the makers described above) is entitled to.

5 — Other instances of initial ownership vested in a person or entity other than the actual human creator? (Other than 6, below.)

Future or 'prospective' copyright is expressly recognised in the Act (sec 197). By virtue of this provision, if a creator enters into a written and signed agreement relating to a future copyright (meaning a work or subject matter that is yet to be made) whereby that copyright is to be assigned to another person (the assignee) in part or in whole, then when the copyright material comes into existence, the rights vest in the assignee or their successor in title. Thus, initial ownership of copyright vests in a person other than the author when a work or other subject matter comes into existence in these circumstances.

The Act also provides for 'Crown copyright', ie copyright that vests in the State in right of an Australian state (NSW, Victoria, Queensland and so on) or the Commonwealth (the Federal government) where a work is made at its direction. Sec

176 provides: 'The Commonwealth or a State is [...] the owner of the copyright in an original literary, dramatic, musical or artistic work made by, or under the direction or control of, the Commonwealth or the State, as the case may be'. Analogous provisions apply to films and sound recordings. The subsistence, duration and ownership of Crown copyright is subject to different statutory provisions, but in every other way the same rules apply as to all other works and neighbouring rights.

6 — If your country's law recognizes copyright in AI-generated works, who is vested with original ownership? (e.g., the person providing the prompts to request an output? The creator of the LLM model and/or training data? someone else?)

Australia does not recognise that copyright vests in works or subject matter that is autonomously generated by AI or LLM systems. The author of a work must be a natural person or persons, the term of copyright being determined by their lifespan, generally plus 70 years. The requirement of 'originality' has been defined as meaning that the expression of a work in a particular form must emanate from a process of creation in a human brain. There is no possibility of vesting or transferring copyright to anything other than a human or legal (corporate) person in Australia. There is no possibility of joint authorship between a human author and an AI system, as such a system cannot contribute an authorial performance. If an AI system is used as a tool without autonomy but at the direction or in the control of a human author, that human author could generate a work in which they own copyright, but such a scenario differs in no way from a human author using a traditional computer system to reduce a work to material form. Having said this, the directions or 'prompts' given by the human director will still need to be sufficiently substantive in their form and sufficiently proximate to the final work produced in order that these directions or prompts could be regarded as 'authorial'. In one case concerning telephone directory listings which were automatically compiled from a database at the request of a computer operator, the Court held that no copyright vested in the resulting telephone book.

B. Private international law consequences

1 — To what country's law do your country's courts (or legislature) look to determine initial ownership: Country of origin? Country with the greatest connections to the work and the author(s)? Country(ies) for which protection is claimed?

Under the Act, copyright subsists in an unpublished work if the author was an Australian citizen or a person who resides in Australia when it was made or for a substantial period during its making. Copyright also subsists in a work if its first publication took place in Australia, or the author was an Australian resident or citizen at the time of first publication of the work. By virtue of sec 184 of the Act, the protection of Australian copyright law can be extended to material that is protected by analogous rules (of citizenship, residency and first publication) by the law of

other countries. By the Copyright (International Protection) Regulations 1969, the provisions of the Act apply to works first published in in a Berne Convention country, a Rome Convention country, a UCC country, a WCT country, a WPPT country or a WTO country, or where the foreign law vests copyright because of citizenship etc in the foreign national. In other words, a foreign litigant will have the benefit of Australian copyright law in cases where an action is brought in Australia in respect of the copyright that that foreign litigant owns in Australia by virtue of International Protection Regulations (and, ultimately, because of our obligations under the Berne Convention). The Australian Act applies to the resolution of such matters, not the law of any other countries. However, if the question for the Australian court concerns the ownership of copyright arising in other countries than Australia, in principle the Australian court should apply the law of that country to determine that entitlement issue (there is, however, some case law that suggests that it is Australian law, the law of the forum, that determines this issue, but this may no longer be the case). Furthermore, if the question before the Australian court concerns alleged infringements of copyrights situated outside Australia, it is likely that the Australian court will apply the law of that country to determine that question.

## II. TRANSFERS OF OWNERSHIP [SESSION 3]

A. Inalienability

1 — Moral rights

a. Can these be granted to the grantee of economic rights? To a society for the collective management of authors' rights?
Sec 190 of the Act states that only individuals can have moral rights. Moral rights in Australia are granted to authors of works but also to producers, directors and screenplay writers of films. The moral rights protected are the rights of integrity of authorship and the right of attribution as well as against false attribution. Moral rights cannot be transferred to any other entity, by virtue of sec 195AN ('a moral right in respect of a work is not transmissible by assignment, by will, or by devolution by operation of law'). However, most moral rights subsist for the life of the copyright (except for the right of integrity of authorship in a film), ie for the life of the author plus seventy years. The moral rights of authors are to be exercised by their legal personal representative upon their death (or in case of incapacity). Where there are joint authors or moral rights holders they can validly agree only to exercise their rights of integrity of authorship jointly (sec 195AN (4)).
b. May the author contractually waive moral rights?

The terminology of 'waiver' is not used in the Act. However, authors are able to validly 'consent' to the doing of acts in relation to their works (or films) that would otherwise constitute a breach of their moral rights. Nonetheless the Act specifically prescribes that such consent should be genuinely given and relate to specific acts or classes/types of acts in relation to specific works or classes/types of works only (unless the author is an employee when more blanket consent can be granted to their employer). The consent is statutorily invalidated by duress or false or misleading statements (sec 195AWB). There is no provision for a general or public waiver of moral rights, but this is not specifically excluded by the Act and the view may therefore be taken that moral rights in Australia may be waived in the same way that other rights may be waived under the general law.

2 — Economic rights

a. May economic rights be assigned (as opposed to licensed)? May an author contractually waive economic rights?
Economic rights can be assigned or licensed, and the Act makes a distinction between exclusive and non-exclusive licenses. The economic rights can be partially assigned: as to individual exclusive rights; as to a limited geographical area; and for a time less than the full extent of the copyright. Alternatively, all rights can be assigned for the whole duration of the copyright and for the whole world. An assignment (which is a transfer of ownership) must be in writing and signed by the assignor. The same applies for an exclusive license, which is a license that excludes all others including the licensor from performing acts comprised in the copyright. A non-exclusive license need not be in writing and signed and can be implied. However, only an exclusive licensee (and an assignee) have an independent right of action for copyright infringement. Nonetheless, an exclusive licensee must join the licensor either as plaintiff or defendant in such an action. The 'waiving' of economic rights is possible under Australian copyright law, as in the case of moral rights (see above). More usual, however, is the deployment by courts of the concept of an implied license. In general, Australian courts tends to be careful not to imply a license too readily, both in contractual circumstances (whether a contractual arrangements carries with it an implied copyright license), or where copyright materials are made publicly available (eg on the Web).

b. Limitations on transfers of particular economic rights, e.g., new forms of exploitation unknown at the time of the conclusion of the contract.
This is a live issue in Australia as elsewhere as publishers and other intermediaries are asking authors for variations to their contracts to enable the publisher to enter licensing deals with AI companies. It is not clear to what extent the latter deals rely on existing copyrights or might reflect views about future evolutions of copyright (including for instance the introduction of exclusive rights beyond mere copying, to use copyright works for AI or LLM algorithmic training). Nonetheless, it is not possible to contractually extend copyright, at least not in time. Transitional provisions in any amending legislation that extends the exclusive rights of authors can deal expressly with the amendment's effect on existing license arrangements. However, where a complete assignment of copyright has occurred before any amendment, it would seem that additional rights would naturally and unavoidably accrue to the assignee.

B. Transfers by operation of law

1 — Presumptions of transfer:

The economic rights in copyright subject matter can be transferred by operation of law in two circumstances: upon the death of the copyright owner; and in the case of bankruptcy of the owner of the copyright. If the copyrights the deceased owned were not expressly bequeathed in their will, then by operation of the law the copyrights will fall into the residual estate and usually accrue to the beneficiaries. If a copyright owner goes bankrupt or into receivership, copyrights as personal property will fall under the control of the trustee in bankruptcy or the receiver and then be dealt with in accordance with the legal rules that apply in such situations.

a. to what categories of works do these presumptions apply?

b. are they rebuttable? What must be shown to prove that the presumption applies (or has been rebutted)?

c. Scope of the transfer: all rights? Rights only as to certain forms of exploitation?

d. Conditions for application of the presumption (e.g. a written audiovisual work production contract; provision for fair remuneration for the rights transferred)?

2 — Other transfers by operation of law?

There is the possibility that the copyright owner falls under some disability such as illness or insanity – how the copyrights as property of that person are dealt with is then a matter for domestic (State) law to determine.

C. Transfers by contractual agreement

1 — Prerequisites imposed by copyright law to the validity of the transfer, e.g., writing, signed, witnessed, recordation of transfer of title?

Assignments of copyright must be in writing and signed by the assignor (the owner of the copyright at the time of assignment). If a purported assignment is not in this form, it is not effective against third parties although the assignee may have an equitable remedy that they can persuade a court to recognise against the assignor (to have the assignment properly executed for instance, or to prevent the sale of the same copyright to another party). A security interest in a copyright can be registered in Australia, so that the holder of the registered interest can take the benefit of the copyright if the grantor defaults etc.

2 — Do these formal requirements include an obligation to specify what rights are transferred and the scope of the transfer?

The normal contractual principles apply to determine whether all or part only of a copyright has been transferred, for how long and for what area. A particular difficulty in interpretation can occur where an assignment and an exclusive license are to be distinguished, since an assignment can be for a limited period. General principles of contract interpretation aim to determine the true intent of the parties to the agreement.

3 — Does your country's law permit the transfer of all economic rights by means of a general contractual clause?

Particular issues arise where a transfer or assignment of copyright occurs within a contract that is essentially of a different nature (eg the sale of a business). A court might have to determine whether such a broader transfer or sale amounts to a written and signed assignment of a copyright that is an asset of the business.

4 — Does your country's law permit the assignment of all rights in future works?

Yes sec 197 of the Act expressly provides for the assignment of prospective copyright, ie copyright in works that have not yet been created but are intended to be created in accordance with the terms of the contract.

D. Private international law

1 — Which law does your country apply to determine the alienability of moral or economic rights and other conditions (e.g. the country of the work's origin? The country with the greatest connections to the work and the author(s)? The country(ies) for which protection is claimed?)

If an action is brought in Australia then Australian copyright law (the Act and precedent) will apply to the matter, irrespective of whether the copyright originally vested in Australia or in another country (see above). However, reference to the law of the country of origin to determine the scope and content of the rights granted under that law might be required to determine the effect of any transfer of those rights under Australian law.

Moral rights are inalienable under the Australian Act.

## III. CORRECTIVE MEASURES, SUBSEQUENT TO TRANSFERS OF RIGHTS, ACCORDED TO AUTHORS OR PERFORMERS IN VIEW OF THEIR STATUS AS WEAKER PARTIES [SESSION 4]

1 — Does your law guarantee remuneration to authors and performers?

a. By requiring payment of proportional remuneration in certain cases (which)?
No - the law in Australia does not guarantee levels of remuneration for authors or performers. However, where copyright works are exploited under statutory license, the Copyright Tribunal established under the Act can determine the rates and conditions that apply to the said license. The same applies where a licensing system is administered by a collecting society. The Copyright Tribunal can for instance determine royalty payments for musical works in certain circumstances where they are used under a statutory recording scheme.
b. By a general requirement of appropriate and proportionate remuneration?
In Australia no special rules apply to contracts that relate to the licensing or assignment of copyright. The general rules of contract law apply, where in principle *pacta sunt servanda* and contracts cannot be reviewed by a court applying a general standard of balance, fairness or good faith. However, in some cases of unconscionable conduct by the stronger party in a pre-contractual bargaining situation, a court might invalidate the resulting contract. This usually requires unequal bargaining power, one party being in an unusually vulnerable position, and the stronger party taking unfair advantage of the vulnerability to drive a clearly unbalanced or unfair bargain. A court might also strike down a bargain if

it is tainted by the misleading and deceptive conduct of one party: if a party falsely represents that certain terms are meaningless or ineffectual, or for instance, in a copyright context, misrepresents how royalties might be calculated or payable etc, then a court might intervene and hold the contract to be unenforceable. Only in one case does the Act make express reference to issues of contract formation and that is in relation to consents granted in relation to moral rights by an author: sec 195AWB provides that such consent has no effect if it has been obtained by duress or the consent results from a false or misleading statement knowingly made by another person who intends to obtain the consent by making the false or misleading statement. For the rest, the usual vitiating factors apply to a contract involving rights in copyright such as duress, mistake and illegality, as they might apply to any other contract.

c. By adoption of mechanisms of contract reformation (e.g., in cases of disproportionately low remuneration relative to the remuneration of the grantees?
   Courts in Australia do not rewrite bargains as a general rule and that also applies in relation to copyright; rather they might declare a contract unenforceable or terminate it (eg a long term management agreement in the music industry that grants disproportionally small royalties and imposes substantial obligations for very long periods etc.).
d. By providing for unwaivable rights to remuneration in the form of residual rights?
   This question has no application in the Australian context.

2 — Does your law require that the grantee exploit the work?

a. Does your law impose an obligation of ongoing exploitation? For each mode of exploitation granted?
   No - there is no obligation for the owner of copyright to exploit the work or grant a license or permission to others or to do so on certain terms etc. It is not possible to apply for the grant of a compulsory license in relation to the exploitation in some form of a particular copyright work or subject matter on the ground of non-exploitation by the owner. However, there are statutory and compulsory licensing schemes under the Act (eg for the playing of music and musical recordings in public) where the individual license, permission or authorisation of a copyright owner in relation to a particular work or subject matter need not be sought. Instead, a blanket license is obtained from a collecting society relating to all copyright works (by and large) and for a certain class or category of uses (eg public performance of musical works or reproduction of literary works for the purpose of education). There are interoperability provisions relating to computer programs as literary works which allow some limited copying

of parts of a computer program for the sake of interoperability with another program.

b. What remedies are there if the grantee does not exploit the work?
None; if by grantee is meant the person to whom the author grants rights, then that person will be subject to the obligation to perform the contract in accordance with whatever terms it contains.

3 — Does your law impose a transparency obligation on grantees?

a. — What form does such an obligation take (accounting for exploitations, informing authors if the grantee has sub-licensed the work, etc)
Clear accounting in terms of royalties (ie presenting comprehensible accounts regularly to authors etc) is often discussed but there is no legal obligation in Australia that is imposed other than by virtue of what an agreement provides; ie there is no legal obligation extraneous to the contract terms themselves.

b. — What remedies are available if the grantee does not give effect to transparency requirements?
The normal remedies for breach of contract.

4 — Does your law give authors or performers the right unilaterally (without judicial intervention) to terminate their grants?

a. Under what circumstances?

i. After the lapse of a particular number of years?

No there is no right of reversion unless that is specified in the contract, in other words unless such a term is included in the contract. Some publishing contracts etc might have a reversion clause that provides that if levels of sales of copies or of exploitation fall below a certain minimum requirement, the copyright fully reverts to the author or owner.

NB there was a limited right of reversion under the 1911 Act which theoretically is preserved under the (present) 1968 Act, but very few 1911 Act cases will arise.

ii. In response to the grantee's failure to fulfil certain obligations, under what conditions?

The normal or universal rules of contract law would apply with no differentiation because copyright works or subject matter are the subject of the contract.

iii. As an exercise of the moral right of “repentance”? (Examples in practice?)

The moral right of ‘repentance’ or to withdraw a work is not recognised under the Act.

**IV - STREAMING, TRANSFER OR RIGHTS, AND THE MANAGEMENT OF LARGE CATALOGUES [SESSION 5]**

1 — Applicable statutory right

a. What specific statutory right applies to licensing the streaming of works and performances?

i. Is it the right of communication to the public modelled after Article 8 of the WCT for authors, and the right of making available modelled after Articles 10 and 14 of the WPPT for performers and phonogram producers?

Yes, for literary, dramatic and musical works it is the right to ‘communicate the work to the public’ (sec 31 (1)(a)(iv). The term "communicate" is further defined in sec 10 of the Act. By virtue of this section, it ‘means make available online or electronically transmit (whether over a path, or a combination of paths, provided by a material substance or otherwise) a work or other subject - matter, including a performance or live performance within the meaning of this Act’. The exclusive right to communicate subject matter other than works to the public subsists in films, sound recordings and sound & television broadcasts (sec 85, 86, and 87). Communication to the public is distinct from the right to publish (which is generally regarded as a right of first publication) and the right of public performance (which is live or mechanical performance to an audience brought together by public or professional ties, not in the private or family sphere).

ii. Another right or a combination of rights?

As above.

c. For authors, does this right cover both musical and audiovisual works? For performers, does this right cover both performances fixed in phonograms and audiovisual fixations?
Authors have rights in original musical works that they compose, including the right of communication to the public as described above. Authors of musical works do not have statutory rights to sound recordings or films: these rights are allocated to producers and recording

companies that are responsible for the making of the film or sound recording (see above; a normal part of making a sound recording of a performance of a musical work is to acquire the necessary rights in that musical work from the author (composer) or other owner). As mentioned, the exclusive right of communication to the public subsists in films and sound recordings of musical works or musical performances. Performers whose live performance is recorded in a sound recording are co-owners of the sound recording copyright together with the recording company or label that is responsible for recording ('making') the sound recording. However, performers whose live musical performance is recorded in a film are not, by virtue of the Act, co-owners of the copyright in the film. Performers without reliance on any rights in the works performed, have exclusive rights of authorisation under Pt XIA of the Act 'Performers - Protection'. These rights do not amount to real copyrights but exclusive rights of action in relation to the making of unauthorised recordings of their performances. By virtue of sec 248G a performer has a right of action during the protection period, if another person '(b) communicates the performance to the public, either directly from the live performance or from an unauthorised recording of it.'

2 – Transfer of rights

a. Are there any regulations in your country's law that limit the scope of a transfer or license to the forms of use already known at the time of the transfer or license?
No. It will be a matter of construction of the contract that transfers copyright as to whether it is or was intended to extend to rights that come into existence by statutory amendment after the date of signing of the contract and during the period of its currency.

b. If there are such regulations, when the statutory right referred to in section 1 was introduced into your law, was it considered a new form of use to which the limitation in subsection 2a. above applies?
Not applicable.

c. Are there any cases in your country's law when the statutory right referred to in section 1 is presumed to have been transferred to the producer of a phonogram or audiovisual fixation?

No.

3 — Remuneration

a. Are authors/performers entitled to remuneration for licensing the streaming of their works/performances?
They are, but only by virtue of any contract they have negotiated for that purpose. In other words, there is no statutory provision in the Act that provides that any consideration or payment is required for a valid license, or that specifies a minimum level of royalties etc. In some cases where collecting societies or statutory licenses are involved, the level of remuneration can be fixed by the Copyright Tribunal.
A license of copyright can be a 'bare license', ie a permission or authorisation to do an act comprised in the copyright granted without any consideration or payment, and still be a valid license that is enforceable against the grantor.

b. Do authors and/or performers retain a residual right to remuneration for streaming even after licensing or transferring the statutory right referred to in section 1?
No.

4 — Collective management

a. In your country's law, is collective management prescribed or available for managing the right referred to in section 1? If so, what form of collective management is prescribed (e.g. mandatory or extended)?
The collecting societies APRA & AMCOS grant joint licenses for public performance, broadcasting and for the streaming (making available online) of music in Australia. They are collecting societies that operate within the confines of the provisions of the Act that allow for the establishment and operation of such societies that gather royalties and distribute them to their members. In this case the latter are copyright owners of literary (lyrics) and musical (scores) works copyright and of sound recording copyright.

b. If authors and/or performers retain a residual right to remuneration (ss 3 b.), is collective management prescribed for managing this residual right to remuneration? If so, what form of collective management is prescribed (e.g. mandatory or extended)?
Not applicable.

5 — Transparency and the management of large catalogues

a. Does your law (or, in the absence of statutory regulations, industry-wide collective agreements) guarantee that authors and performers regularly receive information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights? If yes, what is the guaranteed periodicity and content of such information?

Australian law does not expressly guarantee this. However, a collecting society declared under the Act has certain reporting obligations relating to its activities: according to sec 113Z (2) 'The collecting society must keep accounting records correctly recording and explaining the transactions of the society (including any transactions as trustee) and the financial position of the society'. The accounts must be audited and an annual report to the responsible Minister is required. According to sec 113Z (5): 'The collecting society must give its members reasonable access to copies of all reports and audited accounts prepared under this section'. Further, in accordance with sec 113ZB (1) 'The collecting society or a member of the society may apply to the Copyright Tribunal for review of the arrangement adopted, or proposed to be adopted, by the society for distributing amounts it collects in a period'. The Tribunal can, by Order, adopt the existing arrangement, vary it, or substitute a new arrangement. The Act does not specify on what basis such an order might be issued, but the Act does require collecting societies to have Rules that adequately protect the interests of its members (the copyright owners it represents).

b. Are you aware of any case law where the complex chains of copyright titles, typical of large streaming catalogues, have made the management of works or performances non-transparent or otherwise challenging, such as, for example, the case of Eight Mile Style, LLC v. Spotify U.S. Inc. **(**https://casetext.com/case/eight-mile-style-llc-v-spotify-us-inc-1)?

   No.