WHOSE RIGHT IS COPYRIGHT?
OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

NATIONAL REPORT BELGIUM

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The Belgian rules on copyright and related rights can be found in **Book XI of the Belgian Code of Economic Law (CEL)**.

This Book XI was introduced by **law of 19 April 2014** and has been amended many times since.

The last amendments that are of relevance to this report were introduced by the **Act of 19 June 2022** (transposing Directive 2019/790 on copyright and related rights in the Digital Single Market into Belgian copyright law).

Official updated versions are available in:

FRENCH: http://www.ejustice.just.fgov.be/eli/loi/2013/02/28/2013A11134/justel

DUTCH: https://www.ejustice.just.fgov.be/eli/wet/2013/02/28/2013A11134/justel

All English versions of Articles in this report are unofficial translations.

The general rules on authors rights can be found in **Chapter 2**. The general rules on related rights can be found in **Chapter 3**.

In responding to the questionnaire, this report refers to the situation concerning authors and performers separately, even when the situation is similar. To emphasise the double-layering nature of the report, the clarification [or performer] has been inserted in multiple questions where this was deemed missing.

For this report, many references will also made to provisions in **Chapters 4 to 8** that concern the rules on a.o. communication to the public via satellite, retransmission, direct injection and private copying that contain specific rules on the transferability and management of certain rights.

I. INITIAL OWNERSHIP [SESSION 2]

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

A.1. The author [or performer] (human creators)

A.1a. Does your country's law define who is an author [or performer]?

No, there is no definition of who is *an* **author**.

- Article XI.170, al 1 CEL states that "*The original copyright holder is the **natural person** who created the work*."
- Article XI.170, al. 2 CEL stipulates that anyone whose name or acronym appears as such on a work is presumed to be its author. "*Unless the contrary is proven, any person shall be considered an author whose name or acronym by which he is identified is mentioned as such on the work, on a reproduction of the work or in any communication thereof to the public*."
  The regime applicable to anonymous or pseudonymous works is explained below (question A5).
- Article XI.179, al 1 CEL states that – for what concerns audiovisual works – the main director is always considered the author of the audiovisual work. In addition, it is clarified that all natural persons having contributed to the work are considered authors of the audiovisual work.
- Article XI.179, al 2 CEL - concerning audiovisual works - contains a presumption of authorship in favour of several categories of contributors:
  - The screenwriter and the author of the texts
  - The editor
  - The graphic designer of animation works or of animation sequences in an audiovisual work, which constitute an important part of that work.
  - The author of musical works with or without words created specifically for the audiovisual work
  - The authors of the original work (e.g. the author of the book that forms the basis of a scenario of a film)

There is no definition of who is *a* **performer**. The Belgian copyright law does not provide a provision similar to Article XI.170 CEL for authors that emphasizes that it must concern a natural person.

- Article XI.205 §2 CEL provides a similar presumption of ownership: "*Unless the contrary is proven, any person shall be considered a performing artist if his name or initials by which he is identified are mentioned as such on the performance, on a reproduction of the performance, or in a communication thereof to the public*."
- Article XI. 205, §1, al. 5 CEL explicitly includes variety and circus artists as performing artists.
- Art. XI.205, §1, al. 5 CEL states that additional artists (such as extras) recognized as such according to professional practice are not considered performing artists.

A.1.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 concept of co-authorship is addressed extensively in the law, mainly to regulate its impact on determining the duration of the term of protection, as well as the exercise of rights protecting works made by several coauthors.

You will find these provisions in Articles XI.166, XI.168 and XI.169 CEL.

E.g. Article XI.168 CEL states that "*Where copyright is undivided its exercise shall be governed by agreement. Failing an agreement, none of the authors may exercise the right individually, except by judicial decision in the event of disagreement*."

E.g. Article XI.169 CEL states that co-authors have "*the right to exploit their contribution separately, provided that such exploitation does not jeopardize the collective work*."

However, a definition of joint authorship is not present.

A.2. Employers

A.2.a. Under what conditions, e.g., formal employment agreement, in writing and signed? Creation of the work within the scope of employment?

Under Belgian copyright law, employers cannot receive the *initial* ownership of an authors' right or a performer's neighbouring right.

The transfer of economic rights to the employer is explained below (part II).

A.3. Commissioning parties

Under Belgian copyright law, commissioning parties cannot receive the initial ownership of an authors' right or a performer's neighbouring right. The transfer of economic rights to the commissioning party is explained below (part II).

A.3.a. All commissioned works, or limited to certain categories?

Not applicable

A.3.b. Under what conditions, e.g., commissioning agreement, in writing and signed by both parties?

Not applicable

A.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

Under Belgian copyright law, *initial* ownership of an authors' right or a performer's neighbouring right is never granted to the person or entity who takes the initiative of the work's creation.

Of course, this does not alter the fact that producers and publishers have their own neighbouring rights to which they have initial ownership.

A.4.a. scope of ownership of, e.g. all rights, or rights only as to certain exploitations; what rights do contributors to such works retain?

Not applicable

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

Yes, there is one exception to questions 2 to 4: the case of **anonymous or pseudonymous works**, where it is the publisher that is deemed to be the author.

Article XI.170, al 3 CEL states that "*The **publisher** of an anonymous or pseudonymous work is deemed to be the author thereof in the eyes of third parties*."

A.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?)

Belgian copyright law on copyright and related rights does not contain any provision addressing the specific situation of AI-generated works.

- For **authors**, the general requirement from Article XI.170 CEL (i.e. that the author needs to be a natural person) applies.

- For **performers** the Belgian legislation does not distinguish the performance of works protected by copyright from the performance of works not protected by copyright (i.e. folklore, public domain). As a result, the performance of an AI-generated work by a performing artist is protected.

- For **producers** of phonograms and audiovisual fixations (first fixations of films) the same applies. The Belgian legislation does not distinguish the production of a work protected by copyright from the production of a work not protected by copyright (i.e. nature sound, public domain). As a result, the producer of an AI-generated creation that is a phonogram or audiovisual fixation enjoys a neighbouring right

Given the above, an AI-generated work can result in the *initial* ownership of the performers performing the work and the producer performing the first fixation of this creation into a phonogram or audiovisual fixation.

[b. For presumptions of transfers, see II (transfers of ownership, below)]

B. Private international law consequences

B.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) [or performer(s)]? Country(ies) for which protection is claimed?

As general principle, Art. 93 §1 of the Belgian Code on International Private Law establishes that " *Intellectual property rights shall be governed by the law of the State for* ***the territory of which protection of the property is sought*****"**

For the determination of who is the original holder of an industrial property right (sic) is, article 93 § 2 states that this governed by the law of the State with which the intellectual activity has the closest connections. For Copyright and related rights this exception does not apply.

II. TRANSFERS OF OWNERSHIP [SESSION 3]

A. Inalienability

A.1. Moral rights

a. Can these be granted to the grantee of economic rights? To a society for the collective management of authors' [or performers'] rights?

No.

b. May the author [or performer] contractually waive moral rights?

No.

According to Article XI.165 §2 CEL, the moral right of the **author** is "*inalienable*" and "*Any general waiver of the future exercise of that right is null and void*."

The Article specifies that "*Notwithstanding any waiver, the author reserves the right to object to any distortion, mutilation or other modification of this work or any other attack on the work which may damage his honour or reputation*."

According to Article XI.204 CEL, the moral right of the **performer** is "*inalienable*" and "*Any general waiver of the future exercise of that right is null and void*."

The Article specifies that "*Notwithstanding any waiver, the performer reserves the right to object to any distortion, mutilation or other modification of his performance, or any other infringement thereof which may damage his honour or reputation*."

A.2. Economic rights

A.2.a. May economic rights be assigned (as opposed to licensed)? May an author [or performer] contractually waive economic rights?

Yes, the economic rights may be assigned. The Belgian CEL does not explicitly address the issue of an author or performer waiving their economic right (unlike the waiver of moral rights) but it may be argued that such waiver may not be used to circumvent the protective rules concerning the exploitation contracts.

For **authors,** Article XI.167 CEL states that the economic rights: "*are movable rights that are passed on by inheritance and are subject to full or partial transfer, in accordance with the provisions of the Civil Code. They may, among other things, be transferred or included in a simple or exclusive license*."

For **performers,** Article XI.203 CEL states that: "*The neighbouring rights recognised in this Chapter are movable rights that are passed on by inheritance and are transferable, in whole or in part, in accordance with the provisions of the Civil Code. They may, among other things, be transferred or included in a simple or exclusive license*."

This means that as a general principle for authors and performers all their rights are transferable, assignable and waivable, unless stipulated otherwise.

A.2.b. Limitations on transfers of particular economic rights, e.g., new forms of exploitation unknown at the time of the conclusion of the contract.

See Q.II.B and Q.II.C.

B. Transfers by operation of law

B.1. Presumptions of transfer:

B.1.a. to what categories of works do these presumptions apply?

For **authors** there are four presumptions.

- Article XI.182 CEL applies to audiovisual works and introduces a rebuttable presumption of transfer to the producer.
    - The presumption is rebuttable.
    - The presumption is limited to the exclusive rights on the audiovisual exploitation of the audiovisual work.
    - The resumption does not apply to the authors of musical works.
- Article XI.173 CEL applies to works of graphic or visual art and introduces the rebuttable presumption that upon transfer of the work itself, the receiver of the work obtains the right to exhibit the work. The Article explicitly limits the transfer to the right to exhibit only.
- Article XI.187 CEL which applies to databases that are protected by authors rights, introduces a presumption of transfer of the economic rights on the protected database to the employer.
- Article XI.296 CEL which applies to computer programs introduces a presumption of transfer of the economic rights on the computer program to the employer.

For **performers** there is one presumption.

- Article XI.206 CEL applies to audiovisual works and introduces a rebuttable presumption of transfer to the producer.
    - The presumption is rebuttable.
    - The presumption is limited to the exclusive rights on the audiovisual exploitation of the audiovisual work.
    - The resumption does not apply to the authors of musical works.

B.1.b. are they rebuttable? What must be shown to prove that the presumption applies (or has been rebutted)?

Yes, see Q.B.1.a., all presumptions are rebuttable by written contract.

B.1.c. Scope of the transfer: all rights? Rights only as to certain forms of exploitation?

See Q.B.1.a., the presumption are all limited to certain modes of exploitation.

B.1.d. Conditions for application of the presumption (e.g. a written audiovisual work production contract; provision for fair remuneration for the rights transferred)?

For **authors**.

Article XI.182 CEL does not contain any specific conditions.

Article XI.183 CEL states explicitly that the author has the right to a separate remuneration for each mode of exploitation.

Article XI.167/1 CEL, which introduces the general principle of an appropriate and proportionate remuneration applies to *any* transfer, including the transfer that is the result of the presumption.

For **performers**.

Article XI.206 CEL does not contain any specific conditions.

Article XI.206 CEL states explicitly that the performer has the right to a separate remuneration for each mode of exploitation.

Article XI.205/1 CEL, which introduces the general principle of an appropriate and proportionate remuneration applies to *any* transfer, including the transfer that is the result of the presumption.

B.2. Other transfers by operation of law?

No.

Article XI.207 CEL, which concerns performer rights, states that in case of a live performance by an ensemble "permission is given by the soloists, the conductors, the directors and, for the other performing artists, by the director of their group". However, this concerns only the *exercise* of the rights and not a *transfer* of the right itself.

C. Transfers by contractual agreement

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

For **authors**, contracts are concluded in accordance with the civil code.

Belgian copyright law provides specific rules for contracts for the transfer (or licensing) of authors' rights:

- In writing – for evidentiary purposes vis-à-vis the author; a written contract is not a validity requirement (Article XI.167 §1(2) CEL)
- Interpreted in a restrictive way, i.e. in favour of the author (Article XI.167 §1(3) CEL).
- The transfer of a material object incorporating the work does not entail the transfer (or licence) of the exploitation rights (Article XI.167 §1(2) CEL).
- An obligation to specify the geographical scope, term and remuneration for each mode of exploitation (Article XI.167 §1(4).
- The exploitation rights covering modes of exploitation not yet known at the time of the contract may not be transferred; such clause is null and void (Article XI.167 §1(6) CEL).
- Specific rules on future works are discussed below (see C.4).

Articles XI.194 to XI.196 CEL provide additional requirements for the publishing contract.

Article XI.201 CEL provides additional requirements for the performance contract.

For **performers**, contracts are concluded in accordance with the civil code

Belgian copyright law provides specific rules for the transfer (or licensing) of performers' rights:

- In writing for evidentiary purposes vis-à-vis the performer; a written contract is not a validity requirement (Article XI.205 §3(1) CEL).
- Interpreted in a restrictive way, in favour of the performer (Article XI.205 §3(2) CEL).
- The transfer of a material object in which the fixation of the performance is incorporated does not entail the transfer (or licence) of exploitation rights (Article XI.205 §3(2) CEL).
- An obligation to specify the geographical scope, term and remuneration for each mode of exploitation (Article XI.205 §3(3) CEL).
- The exploitation rights covering modes of exploitation not yet known at the time of the contract may not be transferred; such clause is null and void (Article XI.205 §3(5) CEL).

Additional obligations apply to exploitation contracts with authors and performers (infra).

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

YES.

For **authors,** Article XI.167 §1(4) CEL states that: "*For each mode of exploitation, the remuneration to the author, the scope and the duration of the transfer or the licence must be expressly determined*."

For **performers**, Article XI.205 §3 (3) CEL states that "*For each mode of exploitation, the remuneration for the performer, the scope and duration of the transfer or licence must be explicitly determined*."

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

No – except for:

For **authors**, this is possible in the case of:

1. Works created as part of an employment contract or statute. In this case Article XI.167 §3(1) CEL allows for the transfer or licensing of the economic rights to the employer "*to the extent that such transfer or licensing of rights is expressly provided for and to the extent that the creation of the work falls within the scope of the agreement or statute*."
2. Commissioned work. In this case Article XI.167 §3(2) CEL allows for the transfer or licensing of the economic rights to the person who commissioned the work, "*to the extent that the latter carries out an activity in the non-cultural sector or in advertising, provided that the work is intended for such an activity and that such transfer or licensing of rights is expressly provided for*."

In these cases, the requirement to determine the scope and the duration of the transfer and a remuneration for each mode of exploitation, no longer apply. This also applies to the prohibition on the transfer of rights or the granting of a license concerning forms of exploitation not yet known.

For **performers**, this is possible in the case of:

1. Performances delivered as part of an employment contract or statute. In this case Article XI.205 §4(1) CEL allows for the transfer or licensing of the economic rights to the employer: "*to the extent that this transfer or licensing of rights is expressly provided for and to the extent that the performance falls within the scope of the agreement or the statute*."
2. Commissioned performances. In this case Article XI.167 §3(2) CEL allows for the transfer or licensing of the economic rights to the person who commissioned the performance, "*to the extent that the latter carries out an activity in the non-cultural sector or in advertising, provided that the service is intended for that activity and that such transfer or licensing of rights is expressly provided for*."

In these cases, the requirement to determine the scope and the duration of the transfer and a remuneration for each mode of exploitation, no longer apply. This also applies to the prohibition on the transfer of rights or the granting of a license concerning forms of exploitation not yet known.

Remark! In both cases the general contractual clause cannot cover the transfer of any non-transferable or unwaivable remuneration right an author or performer might be entitled to.

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

YES.

However, the transfer is submitted to additional conditions.

- Limited in time.
- Specification of the genre of works

For **authors** this is ruled by Article XI.167 §2 which states that: "*The transfer or license of the intellectual property rights concerning future works is only valid for a limited period of time and to the extent that the genre of the works to which the transfer or license relates is determined.*"

For **performers** this is ruled by Article XI.205 §3(6) which states that "*The transfer or licence of the property rights relating to future performances shall only be valid for a limited period of time and to the extent that the genre of the performances to which the transfer or licence relates is determined*."

D. Private international law

D.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) [or the performer(s)], the country(ies) for which protection is claimed?)?

The transfer of copyright and related rights will be assessed in accordance with the law applicable to the ownership of the performing artist's copyright or related rights under Articles 93-94 of the Belgian Code on International Private Law.

Article 93 al 1 determines the basic principle, namely that: "*Intellectual property rights shall be governed by the law of the State for* ***the territory of which protection of the property is sought***."

Article 93 al 2 provides an exception to this in the case of a contractual transfer , namely: "*Where the activity takes place within the framework of contractual relations, the law of the State whose law governs those relations is presumed, unless proven otherwise*."

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?

1.a. By requiring payment of proportional remuneration in certain cases (which)?

See Q III.1.b.

1.b. By a general requirement of appropriate and proportionate remuneration?

YES.

For all authors' and performers' contracts, the remuneration must be specified for all modes of exploitation for which the economic rights are transferred or given in licence (art. XI.167, §1 CEL and XI.205, §3 CEL).

A general requirement of appropriate and proportionate remuneration is included in the Belgian legislation for "exploitation agreements", a species of the authors' and performers' contracts (cfr. Article 18 CDSM Directive 2019/790).

For **authors** this is Article XI.167/1 CEL: "*When an author has transferred or licensed his exclusive rights for the exploitation of his works under an exploitation agreement, he retains the right to receive appropriate and proportionate remuneration*."

For **performers** this is Article XI.205/1 CEL: "*Where a performer has transferred or licensed his exclusive rights for the exploitation of his performance under an exploitation agreement, he retains the right to receive appropriate and proportionate remuneration*."

1.c. By adoption of mechanisms of contract reformation (e.g., in cases of disproportionately low remuneration relative to the remuneration of the grantees?

YES.

For **authors**, Article XI.167/3 CEL stipulates that, within the framework of an exploitation agreement, an author may claim "*additional, appropriate and fair remuneration when the originally agreed remuneration proves to be disproportionately low in comparison with all relevant subsequent revenues resulting from the exploitation of the work*."

For **performers**, Article XI.205/3 CEL stipulates that, within the framework of an exploitation agreement, a performer may claim "*additional, appropriate and fair remuneration when the originally agreed remuneration proves to be disproportionately low in comparison with all relevant subsequent revenues resulting from the exploitation of the performance*."

1.d. By providing for *unwaivable* rights to remuneration in the form of residual rights?

The following *unwaivable* (**UW**) remuneration rights exist under Belgian copyright law for authors and performers. **NT** refers to *non-transferable*, **MCM** to *mandatory collective management*.

Type of exploitation	Authors	Performers
Resale	Art. XI.175 CEL (NT, MCM)	
Rental	Art. XI.194 CEL (**UW**, NT)	Art. XI.211 CEL (**UW**, NT)
Broadcasting of phonograms	/	Art. XI.212 CEL (NT, MCM)
Public performance of phonograms	/	Art. XI.212 CEL (NT, MCM)
Annual supplementary remuneration for the exploitation (making available, reproduction, distribution) of phonograms older than 50 years	/	Article XI.210 CEL (**UW**, MCM)
(Cable) retransmission	XI.225 CEL (**UW**, NT, MCM)	XI.225 CEL (**UW**, NT, MCM)
Communication to the public by means of direct injection	XI.227/1 CEL (**UW**, NT, MCM)	XI.227/1 CEL (**UW**, NT, MCM)
Communication to the public (including making available) by OCSSP	XI.228/4 CEL (**UW**, NT, MCM)	XI.228/4 CEL (**UW**, NT, MCM)
Communication to the public (including making available) by streaming providers of music and audiovisual works	XI.228/11 CEL (**UW**, NT, MCM)	XI.228/11 CEL (**UW**, NT, MCM)
Private copying	XI.229 + XI.234 CEL (NT, MCM)	XI.229 + XI.234 CEL (NT, MCM)
Reprography	XI.235 + XI.239 CEL (NT, MCM)	
Use for educational and scientific research purposes	XI.240 + XI.241 CEL (NT, MCM)	XI.240 + XI.241 CEL (NT, MCM)
Lending	XI.243 + XI.245 CEL (NT, MCM)	XI.243 + XI.245 CEL (NT, MCM)

Remark: in those situations where mandatory collective management is combined with legal repartition keys of the remuneration collected, the remuneration right is not made explicitly unwaivable. An author/performer might in these cases waive the right, but the waiver could then be considered as being limited to the possibility of receiving the remuneration from the CMO. It should then not limit the CMO in obtaining the remuneration it is entitled to receive based on the applicable legal repartition key.

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

2.a. Does your law impose an obligation of ongoing exploitation? For each mode of exploitation granted?

YES.

There's a general obligation to exploit the work / performance in accordance with the fair professional practices (art. XI.167, §1 CEL, art. XI.205, §3 CEL)

A more precise obligation is provided for exploitation agreements with authors and performers.

For **authors** this is stipulated in Article XI.167/4 CEL which states that (1) the exploitation needs to be achieved within the agreed term and (2) if the term is not explicitly included in the contract, a reasonable term will be determined based on professional practices specific to the type of work.

For **performers** this is stipulated in Article XI.205/4 CEL which states that (1) the exploitation needs to be achieved within the agreed term and (2) if the term is not explicitly included in the contract, a reasonable term will be determined based on professional practices specific to the type of performance.

2.b. What remedies are there if the grantee does not exploit the work?

In addition to contractual liability, a violation of the statutory obligation to exploit a work in accordance with fair professional practices can be found.

Possibility of revocation for exploitation agreements.

For **authors**.

Article 167/4 (3) CEL states that: "*If the person to whom the rights have been transferred or the licensee fails to fulfil his obligation of exploitation within the time limits laid down in the first and second paragraphs, and without any legitimate reason to excuse him, the author may reclaim all or part of the rights transferred or exclusively licensed or terminate the exclusivity of the licence.*"

This right of revocation is limited by XI.167/4 (4) CEL which provides a list of five situations in which the author cannot rely on the right of revocation, including, for example, when the work was created in performance of an employment contract or a statute and to the extent that the creation of the work falls within the scope of the contract or statute.

For **performers**.

Article XI.205/4 (3) CEL states that: "*If the person to whom the rights have been transferred or the licensee fails to fulfil his obligation of exploitation within the time limits laid down in the first and second paragraphs, and without any legitimate reason to excuse him, the performer may reclaim all or part of the rights transferred or exclusively licensed or terminate the exclusivity of the licence.*"

This right of revocation is limited by XI.205/4 (4) CEL which provides a list of five situations in which the performer cannot rely on the right of revocation, including, for example, when it concerns a contribution more than one performer and the use of revocation mechanism would be adversely affect the legitimate interests of all other performers.

Article XI.210 states that when a producer of phonograms fails to offer for sale or make available to the public sufficient copies of the phonogram 50 years after its publication, "*the performer may terminate the contract transferring his rights to the fixation of his performance to a phonogram producer*".

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

YES.

For all authors' and performers' contracts, there is an obligation to specify the scope, term and remuneration of the transfer, per mode of exploitation for which rights are transferred (art. 167 and 205 CEL).

In addition, specific rules apply to exploitation contracts:

3.a. What form does such an obligation take (accounting for exploitations, informing authors [or performers] if the grantee has sub-licensed the work, etc)

For **authors**, this is dealt with by Article XI.167/2 CEL, which states that the person or entity that receives the rights must provide the authors with "*current, relevant and complete information concerning the exploitation of his works, in particular as regards the methods of exploitation, all income generated and the remuneration due*", and this "*within a reasonable period after the exploitation in question has taken place, on a regular basis and at least once a year*."

For **performers**, this is dealt with by Article XI.205/2 CEL, which states that the person or entity that receives the rights must provide the performer with "*current, relevant and complete information concerning the exploitation of his works, in particular as regards the methods of exploitation, all income generated and the remuneration due*", and this "*within a reasonable period after the exploitation in question has taken place, on a regular basis and at least once a year*."

3.b. What remedies are available if the grantee does not give effect to transparency requirements?

Belgian copyright law does not provide for any specific penalties for failure to comply with these obligations.

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

YES, under certain specific circumstance and in accordance with the civil code.

4.a. Under what circumstances?

See Q.III.2.b on non-exploitation of the work or performance.

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

See Q.III.2.b. on non-exploitation of the work or performance (after the contractual agreed term or in absence of such term, a reasonable term).

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

Specifically for **authors** there are two situations in which they can unilaterally terminate a contract.

Article XI.185 CEL which concerns the bankruptcy of an audiovisual producer provides authors with the right to request the termination of the contract if the audiovisual work has not been sold 12 months after the producer has ceased operations or the liquidation has been announced.

Articles XI.199 and XI.200 CEL, which concern the publishing contract, contain specific grounds for termination of the contract by the author (bankruptcy and complete destruction of the copies).

Similar provisions for **performers** do not exist.

4.a.iii. As an exercise of the moral right of "repentance"? (Examples in practice?)

No. A breach of moral rights leads to the right to claim damages, but it does not allow an author or performers to unilaterally terminate the transfer of rights under an existing contract.

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

1. Applicable statutory right

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

The right of communication to the public, including the right to making available.

To the extent that the streaming takes place based on a copy, the reproduction right is relevant as well.

1.a.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?

NO, for what concerns performers.

For **authors**, the right to communication to the public – as granted by Article XI.165 §1 (4) – is modelled after Article 8 of the WCT in that sense that it offers an exclusive right to communication to the public, including making available.

For **performers** (and producers), the right of communication to the public is not modelled after Article(s) 10 (and 14) of the WPPT. It is also modelled after Article 8 of the WCT in that sense that is offers an exclusive right to communication to the public, including making available. ➔ see further explanations under Q.IV.1.a.ii.

1.a.ii. Another right or a combination of rights?

For **performers** (and producers), the right to communication to the public is also granted as an exclusive right for any communication to the public, where making available is explicitly included. This right is granted to performers whose performances are fixed in phonograms and in audiovisual fixations, as well as to the producers thereof.

With this, Belgian copyright law offers broader protection than the WPPT that:

- only provides performers (and producers) an exclusive right for the specific communication to the public that is making available.
- does not provide performers (and producers) an exclusive right for any other communication to the public (other than making available).
- Does not provide performers whose performances are fixed in audiovisual fixations (and producers) any protection.

For performers whose performance is fixed in a *phonogram* this exclusive right is *limited to a remuneration right* for the specific communication to the public that constitutes a broadcasting or a public performance (see Article XI.212 CEL – see Q.III.1.d.). For any communication to the public that does not fall under the definition of broadcasting or public performance, the exclusive right remains in effect.

For performers whose performance is fixed in an *audiovisual work*, the exclusive right applies for all forms of communication to the public.

For acts of communication to the public performed by specific users such as (cable)re-transmitters, OCSSPs, streaming platforms (see Q.III.1.d.), the transfer of the *exclusive* right of communication to the public, including the right to making available, results in an unwaivable and non-transferable right to obtain a separate remuneration. These remuneration rights apply to authors and performers and to music and audiovisual works without distinction.

1.b. 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?

YES.

For **authors**, the exclusive right to communication to the public, including making available, covers both musical and audiovisual works.

For **performers**, the exclusive right to communication to the public, including making available, covers both performances fixed in phonograms and audiovisual fixations.

The remuneration right for broadcasting and public performance (see Q.IV.1.a.ii.) only covers the communication to the public of performances fixed in phonograms.

2. Transfer of rights

2.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?

YES.

As a general principle (See Q.II.C.1.) the transfer of authors' rights and performers' rights cannot apply to forms of exploitation not yet known.

However (See Q.II.C.3.), this principle does not apply in the situation of commissioned works and performances and when works are created or performances are delivered as part of an employment contract or public servants' statute.

2.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?

NO.

Articles XI.167 and XI.205 CEL do not allow the transfer of rights to apply to forms of exploitation not yet know *at the moment of signing the contract of the transfer*.

The moment of the introduction of the exclusive right of communication to the public, including making available, into the law, has no influence on the application of this limitation.

As a general principle under Belgian copyright law, new rights are always granted to all existing works and performances still covered and for any exploitations that takes place after the entry into force of the legislation.

2.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?

YES.

The exclusive right of communication to the public, including making available, is considered to be included in the presumption of transfer in favour of audiovisual producers, as provided by the Article XI.182 and XI.206 CEL (see Q.II.B.1.).

3. Remuneration

3.a. Are authors/performers entitled to remuneration for licensing the streaming of their works/performances?

YES.

The general principle of appropriate and proportionate remuneration from Article XI.167/1 CEL (**authors**) and XI.205/1 CEL (**performers**) applies.

The general principle from the Articles XI.167 §1, al 4 CEL (authors) and XI.205 §3, al 3 CEL (performers) - that states that for each mode of exploitation, the **remuneration** for the author or performer, the scope and duration of the transfer or licence must be expressly determined – applies.

With regard to the streaming of their works and performances by OCSSPs (Art. XI.228/4 CEL) and streaming platforms (Art.XI.228/11 CEL), this principle was further reinforced with the introduction of specific remuneration rights.

3.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?

YES.

For **authors** and **performers** this right to remuneration is provided by:

- Article XI.228/4 for what concerns the Communication to the public, including making available, by Online Content Sharing Service Providers (OCSSPs).
- Article XI.228/11 for what concerns the Communication to the public, including making available, by streaming providers of music and audiovisual works (streaming platforms).

4. Collective management

4.a. In your country's law, is collective management prescribed or available for managing the right referred to remuneration in section 1? If so, what form of collective management is prescribed (e.g. mandatory or extended)?

YES.

[*Response limited to the specific exploitation of streaming*.]

For what concerns the exclusive right of communication to the public, including making available, collective management is available, but not made mandatory, for authors and performers.

4.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)?

YES.

Specifically, for what concerns **streaming**, both Articles XI.228/4 and XI.228/11 provide for mandatory collective management of the remuneration rights they introduce.

E.g. Article XI.228/4§ 3 states: *"The management of the right to remuneration of authors referred to in paragraph 1 may be exercised exclusively by collecting societies and/or collective management organizations representing authors*.

The management of the right to remuneration of performers referred to in paragraph 1 may be exercised exclusively by collecting societies and/or collective management organizations representing performers."

Similar wordings concerning the mandatory collective management by authors' or performers' *own* collective management organisation, can be found in the Article introducing remuneration rights for other types of communication to the public such as (cable) retransmission (Art. XI.225 §3) and direct injection (Art. XI.227/1 §3).

5. Transparency and the management of large catalogues

5.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?

As a principle this is guaranteed by law. See also Q.III.3.

For **authors**, this is dealt with by Article XI.167/2.

- *Periodicity*. The Article states that information needs to be provided "*within a reasonable period after the exploitation in question has taken place, on a regular basis and at least once a year*."

- Content. The Article states that the person or entity that receives the rights must provide the author with "*current, relevant and complete information concerning the exploitation of his works, in particular as regards the methods of exploitation, all income generated and the remuneration due*".

Article XI.167/5, 4° allows collective bargaining agreements to provide additional rules regarding the transparency obligation. However, currently no such collective bargaining agreements exist.

For **performers**, this is dealt with by Article XI.205/2.

- Periodicity. The Article states that information needs to be provided "*within a reasonable period after the exploitation in question has taken place, on a regular basis and at least once a year*."

- Content. The Article states that the person or entity that receives the rights must provide the performer with "*current, relevant and complete information concerning the exploitation of his works, in particular as regards the methods of exploitation, all income generated and the remuneration due*".

Article XI.205/5, 4° allows collective bargaining agreements to provide additional rules regarding the transparency obligation. However, currently no such collective bargaining agreements exist.

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.