

140 YEARS LATER, LOOKING AHEAD

WHOSE RIGHT IS COPYRIGHT?

OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

October 9-11, 2025

Opatija, Croatia

QUESTIONNAIRE

DENMARK

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

Under the Danish Copyright Act, initial ownership of works vest in their authors.

a. Does your country's law define who is an author?

There is no formal definition, but according to Section 1, copyright is vested in the person who creates a literary or artistic work

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)?

Joint works are regulated by Section 6 of the Danish Copyright Act. Where a work is the result of a collaboration between several authors and the respective contributions cannot be distinguished or separated due to their integrated nature, it constitutes a joint work.

In contrast to joint works, where contributions are inseparably merged, a collaborative work emerges if two or more authors independently contribute distinct parts, each constituting an original work that can be separately identified. In such cases, the contributors hold separate rights to their personal contributions.

Section 6 of the Danish Copyright Act constitutes a dispositive provision, allowing for derogation by mutual agreement between joint authors. Consequently, the parties retain broad freedom to modify or exclude these statutory provisions through express agreements or other binding understandings.

The legal distinction depends on the separability of the authors' contributions. When the contributions are inseparable and cannot be independently exploited, the resulting work is classified as a joint work pursuant to Section 6 of the Danish Copyright Act. In such instances, the co-authors hold a collective copyright, and any exploitation of the work requires their mutual consent. The legal relationship between joint holders of copyright is not regulated by the Copyright Act but follows from general principles of the law of obligations. Each author may, however, without the consent of the others, pursue claims for infringement concerning the work, pursuant to Section 6, last sentence.

Conversely, if the contributions are distinct and capable of independent use, each author retains individual copyright protection over their respective parts. This form of collaboration falls outside the explicit scope of Section 6 and is commonly described as a collective work.

2 — Employers

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

As to employed authors, Danish jurisprudence operates with a presumption that the rights necessary for the employer's ordinary exploitation of a work created under employment are transferred to the employer, unless otherwise agreed. There is no requirement that the employment agreement is in writing or signed.

A specific exception applies to computer programs, which are considered literary works under Section 1(3) of the Danish Copyright Act. According to Section 59 of the Act, which implements Article 2(3) of Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs, the transfer of rights in computer programs is governed by distinct rules.

- "Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the copyright in such a computer program shall pass to the employer."

The application of Section 59 to university researchers is, however, debated. There is not yet definitive case law as to whether the automatic transfer of copyright for computer programs applies to works created by academic staff in universities and similar publicly funded research institutions, so in these cases the parties have to rely on specific agreements to clarify ownership.

It is clear from the preparatory works that as a *lex specialis* the rule does not apply to other categories of literary and artistic works. On the other hand, the term "computer program" is disputed, i.a. in relation to the application of the rule to computer games and other artistically creative computer products.

3 — Commissioning parties

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

There is no statutory provisions regarding the status of commissioned works, except for portraits. In general, the author is the owner of rights, but rights may be considered transferred to the commissioner in accordance with explicit or tacit agreements. As to commissioned portraits, the author cannot exercise her or his rights without the commissioner's consent (Section 60).

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

There are no formal requirements regarding assignment or licensing of rights. Also silent agreements are accepted.

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?

There are no rules regarding collective works in the Copyright Act. As to contributors to audiovisual works, Section 58 of the Danish Copyright Act provides in line with Article 14bis(2) of the Berne Convention that the contributors to the making of a film other than the principal director, script and dialogue writers, and composers of original music made for the film, cannot oppose the reproduction, distribution, public performance, subtitling or synchronization in other languages of the film. This presumption only applies to the said economic rights to exploit the audiovisual work. It does not affect the general rules on authorship or moral rights. This means that the said contributors are still considered authors of their respective contributions and retain moral rights under Section 3 of the Danish Copyright Act, such as the right to be credited and the right to object to derogatory treatment of the work.

Additionally, when it comes to the calculation of the term of protection, Danish law follows the general rule that the term is calculated from the death of the last surviving joint author (Section 63), which applies broadly to all joint works. Specifically for films, however, the term is calculated from the death of the last survivor of the following persons: the principal director, the scriptwriter, the writer of dialogues, or the composer of music specifically for the film, as the case may be.

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

As earlier indicated, original ownership of copyright is always vested in the author who creates the work, or the performer who performs a work.

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?)

Danish copyright law only recognizes copyright in literary and artistic works that are created by human beings.

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

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?

Denmark uses the lex loci protectionis principle as a point of departure, which states that the law of the country for which protection is claimed applies.

Section 86 of the Danish Copyright Act regulates the scope of application of the Act itself. The executive order on the application of the Danish Copyright Act on works and other subject-matter from other countries (Bekendtgørelse 2010-03-09 nr. 218 om anvendelsen af ophavsretsloven i forhold til andre lande) further extends the application of the Act in accordance with Denmark's international obligations. In this respect, the Act is made applicable without any distinction between provisions granting or limiting protection and provisions regulating the ownership of rights.

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?

Moral rights are not transferable, as indicated in Sections 3(3).

b. May the author contractually waive moral rights?

Moral rights can be waived only if the author has authorized a use which is specified as to its kind and extent, as indicated in Section 3(3).

Depending on the circumstances, this may also include authorizing uses for which modifications are necessary, but the outcome of such modifications must be foreseeable to a reasonable extent for the author at the time of waiving the rights. Waivers may, according to

jurisprudence, be accepted based on the context of the authorization, even if not explicitly spelled out in a written contract

2 — Economic rights

a. May economic rights be assigned (as opposed to licensed)? May an author contractually waive economic rights?

The transfer of authors' rights is regulated in Chapter 3 (Sections 53-62) of the Danish Copyright Act. The transfer can be partial or full. The Act does not distinguish between assignments and licenses, but only regulates transfers, a term which is understood to cover both. In practice, the term license is frequently used, but the statute does not specifically prohibit assignments – as opposed to licensing – of any particular right.

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

There are no such limitations in the Danish Copyright Act. Established jurisprudence takes into account whether a form of exploitation was known at the time of the conclusion of the contract when interpreting clauses regarding the scope of the transferred rights.

B. Transfers by operation of law

1 — Presumptions of transfer:

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

There are presumptions regarding transfer of rights to producers of audiovisual works.

For authors of contributions to audiovisual works, Section 58 of the Danish Copyright Act establishes a rebuttable presumption of legitimacy. It implies that when an author enters into an agreement to contribute to the production of a cinematographic work, the producer is presumed to have the necessary rights to exploit the film.

This does not constitute a transfer of the author's rights but rather limits the author's ability to object to certain uses of their contribution that are necessary for the exploitation of the film. The rule is designed to ensure that individual contributors cannot later prevent the commercial use or distribution of the completed work, thereby safeguarding the producer's legitimate interests as well as those of the other contributors. However, the provision does not extend beyond what is necessary for the exploitation of the film as a whole.

Section 58 only applies to authors of literary and artistic works.

For performers, a presumption of transfer follows from Section 65(5) of the Danish Copyright Act. Where a performing artist participates in the production of a film or television work, it is presumed—unless otherwise agreed—that the right of rental of the performance included in the audiovisual work has been transferred to the producer.

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

Both presumptions in Sections 58 and 65(5) are rebuttable. There are no formal requirements regarding the proof of a possible rebuttal. In general, under Danish law, the assessment of evidence is a matter for the courts of law.

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

Section 58 applies to the right of reproduction of the film, the distribution of copies of the film, the public performance, broadcasting and communication to the public of the film, and the subtitling or synchronisation of the film in other languages (Section 58(1)).

Section 65(5) only concerns the right of rental of the film.

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

There are no requirements in either of the presumptions that the engagement to participate in the production is made in writing or otherwise is made in any particular form. Section 58 a provides for authors, and *mutatis mutandis* performers (Section 65(6)), an unwaivable right to remuneration for rental of sound and video recordings after transferring the exclusive rights to the producer. The right can only be exercised through organizations that represent the individual groups of rights owners.

2 — Other transfers by operation of law?

A transfer by operation of law applies to computer programs, which are considered literary works under Section 1(3) of the Danish Copyright Act. According to Section 59 of the Act, which implements Article 2(3) of Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs, the transfer of rights in computer programs is governed by distinct rules.

“Where a computer program is created by an employee in the execution of his duties or following the instructions given by his employer, the copyright in such a computer program shall pass to the employer.”

The application of Section 59 to university researchers is, however, debated. There is not yet definitive case law as to whether the automatic transfer of copyright for computer programs applies to works created by academic staff in universities and similar publicly funded research institutions, so in these cases the parties have to rely on specific agreements to clarify ownership

It is clear from the preparatory works that as a *lex specialis* the rule does not apply to other categories of literary and artistic works. On the other hand, the term “computer program” is disputed, i.a. in relation to the application of the rule to computer games and other artistically creative computer products.

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?

There are no such requirements under Danish law.

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

There is no obligation as such. However, Section 53(3) of the Danish Copyright Act embodies the doctrine of speciality, according to which a transfer of rights to use a work (or *mutatis mutandis* a performance, Section 65(6)) in a particular way or through particular means, does not entitle the transferee to use it in any other ways or through any other means. Thus, in cases where there is doubt or ambiguity regarding the scope of the transfer, it shall be interpreted restrictively. This aims at securing that rights are not transferred more broadly than what was clearly intended.

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

There is no specific prohibition of such transfers.

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

There is no specific prohibition of such transfers.

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?)

Denmark uses the *lex loci protectionis* principle as a point of departure, which states that the law of the country for which protection is claimed applies.

Section 86 of the Danish Copyright Act regulates the scope of application of the Act itself. The executive order on the application of the Danish Copyright Act on works and other subject-matter from other countries (Bekendtgørelse 2010-03-09 nr. 218 om anvendelsen af ophavsretsloven i forhold til andre lande) further extends the application of the Act in accordance with Denmark's international obligations. In this respect, the Act is made applicable without any distinction between provisions granting or limiting protection and provisions regulating the ownership of rights.

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)?

The rules on appropriate and proportional remuneration in Danish copyright law are of a general nature.

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

Section 55 of the Danish Copyright Act states that when the author has made a full or partial transfer of copyright she or he is entitled to appropriate and proportional remuneration. The provision implements Article 18 of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. The provision applies *mutatis mutandis* to performers (Section 65(6)).

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

According to Section 55 b, which implements Article 20 of Directive (EU) 2019/790, authors have a right to claim additional, appropriate and fair remuneration from the acquirer of rights when the originally agreed remuneration turns out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the works or performances. The provision only applies in the absence of an applicable collective bargaining agreement providing for a comparable mechanism. The provision applies *mutatis mutandis* to performers (Section 65(6)).

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

Under the Copyright Act unwaivable rights to remuneration in the form of residual rights are granted for authors regarding the resale right in Section 38 and for rental of sound or audiovisual recordings in Section 58 a. Those rights can only be claimed by, or exercised through, respectively, collective management organizations. The unwaivable right in Section 58 a also applies *mutatis mutandis* to performers (Section 65(6)).

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?

Section 54 imposes on the acquirer of rights an obligation to exploit the transferred rights. It applies to rights of authors and, *mutatis mutandis*, to the rights of performers (Section 65(6)).

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

In relation to authors, Section 54 of the Danish Copyright Act, states that transfers of exclusive rights to a work may be revoked by the transferor with six months' notice, provided that the grantee has failed to exercise the right within a reasonable period following the moment when the grantor has fulfilled her or his contractual obligations. However, the revocation shall not take effect if the grantee initiates use of the right prior to the expiration of the notice period. The provision covers both exclusive licenses and assignments. The right to revoke cannot be waived, except when this has been agreed in a collectively negotiated contract. By virtue of Section 65(6) it applies *mutatis mutandis* to performers as well.

A similar additional right, which applies to performing artists, can be found in Section 66 a, which states that a performing artist may terminate an agreement concerning the transfer of rights in a performance fixed in a phonogram to the phonogram producer, provided that 50 years have elapsed since the phonogram was first lawfully published — or, if unpublished, since it was first lawfully made available to the public — and the producer has both failed to (i) distribute the phonogram in sufficient quantity, and (ii) make it available to the public in such a way that the general public may listen to it from a place and at a time individually chosen by them. According to subsection (2), the artist must provide at least one year's prior notice to invoke this right of termination. This right of revocation is unwaivable.

The provision in Section 54 applies to all categories of works except for computer programs. Section 66 a applies only to agreements concerning the transfer of rights in a performance fixed in a phonogram to the phonogram producer.

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

Section 55(a) of the Act contains a transparency clause that grants authors and performers – or their representatives – the right to receive updated, relevant, and comprehensive information on the exploitation of their works. The clause implements Article 19 of Directive (EU) 2019/790. This right facilitates the exercise of claims for additional remuneration under Section 55(b).

a. — What form does such an obligation take (accounting for exploitations, informing authors if the grantee has sub-licensed the work, etc)?

The author, performer or her or his representative is entitled to receive the information regularly, at least once a year, and include modes and extent of the exploitation by the acquirer of rights or possible subsequent acquirers, revenues generated, and royalties due. Limitations apply where the author's contribution is minor or where providing the information would cause a disproportionate administrative burden, unless the author or performer can establish that the information is needed in order to assess whether the remuneration is unproportionally low and specifically requests the information for that purpose (Section 55 a(2)). If the original acquirer is not in possession of all relevant information, the author or performer can request it from subsequent acquirers. Such requests and conveyance of information shall pass through the original acquirer, unless particular reasons for not doing so apply (Section 55 a(3) and (4)). The said rules apply *mutatis mutandis* to contracts by or based on collectively negotiated agreements (Section 55 a(5)).

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

According to Section 55(c), disputes arising from the application of the obligation to provide information can by each of the parties be brought before the Copyright License Tribunal in accordance with Section 47. The Tribunal is entitled to make the final administrative decision, but it can be brought before the ordinary courts of law.

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

Under Section 54 of the Danish Copyright Act there is a right of revocation in case of non-exploitation of the transferred exclusive rights. There is no other system of termination of transfers in Danish copyright law.

a. Under what circumstances?

For the right to apply, the acquirer of the exclusive right must not have exercised it within a reasonable time after the moment where the grantor has fulfilled her or his obligations under the agreement.

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

The law does not specify an exact time frame for what constitutes a “reasonable period”. It is subject to evaluation in light of the specific circumstances of each case. It is possible for the stakeholders’ organizations to set a specific timeframe in collective agreements.

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

For performing artists, a more specific right of revocation is provided in Section 66(a). Here, a performing artist may terminate a transfer of rights in a performance fixed in a phonogram to the producer, if 50 years have elapsed since the phonogram was published (or, if unpublished, since it was first lawfully made available to the public), and the producer has failed to both (i) distribute the phonogram in sufficient quantity and (ii) make it available to the public in such a way that it can be accessed at a time and place individually chosen by the user. This right requires the artist to give at least one year’s prior notice.

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

The moral right of “repentance” is not recognized as such in Danish law.

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, with the slight terminological modification that Section 2 of the Danish Copyright Act categorizes the right of interactive making available as a subset under the right of public performance, which in its turn is a subset of a more general right of making available, which also covers distribution, public display, communication to the public with or without wire. The broader right of making available is granted to both authors (Section 2) and performers (Section 65 2)).

ii. Another right or a combination of rights?

See the answer to subquestion i, above.

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 and yes.

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?

There are no explicit rules to that effect in the Danish Copyright Act, but it is an element which is taken into consideration by courts when interpreting the scope of rights transferred in a given contract.

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?

N/A

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?

There is at least one case regarding recordings made by a musician where such transfer has been accepted, but the premises explicitly refer to the fact that the musician when still alive was aware of the use taking place, which he did not oppose.

3 — Remuneration

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

Yes, under Section 55 which gives authors (and *mutatis mutandis* performers) a general right to an appropriate and proportional remuneration for all uses.

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?

There are no such statutory rights, but they may be included in the licensing or transferral contracts.

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)?

There is no statutory prescription of collective management for streaming rights. They may, however, be subject to extended collective licensing under the general clause to this effect in Section 50(2). This requires, however, that an agreement regarding the use has been made with a collective management organization which is approved by the Minister for Culture. The organization must be sufficiently representative for the authors or performers of a particular kind of works or performances that are used in Denmark in the particular field. The license does not apply, if the author or performer has opted out.

Otherwise, there are no restrictions in the Act preventing collective management organizations from managing such rights within the mandate conferred to them by their members.

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)?

N/A

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?

Section 55a regulates the obligations of grantees of rights to provide regularly and at least once a year up-to-date, relevant and comprehensive information on their use of works and performances. Further details are provided in the answer to question III 3, above.

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 such Danish case law seems to be available.

