140 YEARS LATER, LOOKING AHEAD

WHOSE RIGHT IS COPYRIGHT?

OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

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QUESTIONNAIRE

Replies by the Finnish Copyright society

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Introduction:

This questionnaire is based on the Congress program and follows its structure:

- *Day 1 – Discussion of principles of copyright ownership*
- *Day 2 – The practical implementation of these principles*

The first day – and therefore the first part of the questionnaire – is divided into three sections corresponding to Sessions 2, 3 & 4 of the Congress program:

- *1 – Original ownership (To whom are copyright and neighbouring rights attributed?)*
- *2 – Transfer of Ownership (How are rights granted or transmitted?)*
- *3 –What corrective measures, subsequent to transfers of rights, do laws accord authors or performers in view of their status as weaker parties?*

The second day focuses on the practical implementation of these rights, particularly in relation to the question of streaming (Session 5).

Each reply to these questions should indicate if the answer is the same or different (if so, how) with respect to neighbouring rights compared with authors' rights.

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 person who has created a work (Section 1 FCA)

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)?

- Work made by two or more authors, whose contributions do not constitute independent works, is to be regarded a joint work (Section 6 FCA)

2 — Employers

a. Under what conditions, e.g., formal employment agreement, in writing and signed? Creation of the work within the scope of employment?
- The initial ownership never lies on the employer, but only in cases of computer software/database and the work strictly associated therewith there is a *ex lege* transfer that automatically transfers the economic right to the employer provided the computer program/ database has been created in the scope of duties in private or public employment (Section 40 b FCA); in court practice if nothing is agreed but the work has been created within the scope of duties of an employment contract, there is presumption that the copyright can be regarded to be transferred from the original right holder to the employer; the burden of proof lies on the employer.

3 — Commissioning parties

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

- The general presumption is for the original right holder, *i.e.* the creator for all kinds of works; however, as for commissioned portraits the artist may not exercise his or her right without the consent of the person who commissioned the portrait or, after that person's death, the surviving spouse and heirs (Section 27 FCA). Especially earlier it was regulated that the commissioner of a photograph got all the rights, but this provision was revoked. Concerning portraits made by photographic means there is a rule according to which a person commissioning a photographic portrait shall, even if the photographer has retained the right in the work, have the right to authorise the inclusion of the portrait in a newspaper, a periodical or a

biographical writing, unless the photographer has separately retained for him/herself the right to prohibit this. (Section 40 c (607/2015) FCA).

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

– Thee is no rule on this in the law; however, if there is a clear agreement (written or oral) a transfer is considered to be possible

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?
   - The general presumption is for the original rightsowner, but the scope of transfer of rights fully depends on the contract (freedom of contract); as for specific kind of works like cinematographic works there is a presumption for the producer of these works concerning the communication to the public, public performance and other necessary rights for utilization of a cinematographic work (Section 39 FCA; film contracts.)
   - The Section is quite narrowly formulated, and it was formulated in times when no digital uses existed; the right of reproduction is not explicitly included

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

- Not in the law as far as copyright is concerned; only based on contractual practice

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?)

- No special provision about computer-generated works, so far

[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?

- Country for which protection is claimed

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?
   - No. Collective organisations can have a minimal role only, e.g. in helping to enforce the moral rights, in informing and safeguarding the rights.

b. May the author contractually waive moral rights?
   - She/he can give up the possibility to rely on moral rights, but she/he never is able to waive them for eternity.

2 — Economic rights

a. May economic rights be assigned (as opposed to licensed)? May an author contractually waive economic rights?
   - Yes – total transfer is possible. The rights are also waivable.

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

- Yes.

B. Transfers by operation of law

1 — Presumptions of transfer:

a. to what categories of works do these presumptions apply?
   - Computer programs and databases (see above, Section 40 b)
   - Transfer of the right to make a film on the basis of a work; the producers' right (Section 39)

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

- Yes – if the transfer is between the original creator and a transferee; narrow interpretation applies (principle laid down in Section 27.3)

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

- Only the forms indicated in the contract (narrow interpretation)

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

- See above; as a rule the principle of appropriate and proportionate remuneration applies to all copyright contracts

2 — Other transfers by operation of law?

- No such provisions

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?

- No formalities exist (freedom of contract)

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

- No such requirements

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

- As such yes, but in dispute – this can be rebutted as well (principle of appropriate and proportionate remuneration)

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

- Yes (but this can be rebutted afterwards – the principle of fairness; right to adequate and appropriate remuneration)

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?)

- The country where the protection is sought

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 form of payment has no significance – instead the fair level of remuneration has (after the implementation of the DSM Directive "adequate and appropriate remuneration")

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

- Yes this is the guiding principle – it applies especially to exclusive licensing, but the principle goes beyond that: to all contracting (Section 28 a in the FCA (607/2015)

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

- The institution of adjustment of an unreasonable condition in the transfer agreement (Section 29 of the FCA)

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

- No, but by providing a possibility to revise the conditions of the agreement (Section 29 see above) – there is one weakness of the institution – to get access to this possibility can require court procedure, which is cumbersome

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?
- Revocation of transfer contract is possible if there exists lack of exploitation – there are formalities to get the right of revocation enforced (details in the Section 30 b of the FCA).

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

- Termination, revocation – of course, negotiation and settlement also

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)
- Yes reporting of the exploitation of a work is guaranteed in the law on regular basis, at least once year, with relevant information (Section 30 a of the FCA).

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

- Contractual relationship should be functional; unfortunately, there is not so much to do, if this obligation is infringed – the sanctions based on contracts are the main means

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?

- Not automatically. Depends on the terms of the contract. But if there exist essentially changed circumstances.

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

- Essentially changed circumstances. E.g. the demand has declined to great extent repentance

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

- Not hardly.

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?

- The rights are modelled after these Articles in the Treaties

ii. Another right or a combination of rights?

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?

- The legislation covers all these rights

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 such regulations

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 such clauses

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?

- Transfer of the right to make a film on the basis of a work shall comprise the right to make the work available to the public on television (See above, Section 39 FCA)

3 — Remuneration

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

- The principle of fair/equitable or adequate and proportionate remuneration prevails (Section 28 a FCA)

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 such rights

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)?

- Collective management is available (extended collective licences are available e.g. concerning use of works in educational activities and scientific research (Section 14 FCA), and concerning works in archives, libraries and museums Section 16d FCA)

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)?

- No such arrangements

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?

- Normally yes according to the law (above) and also according to the contracts

- At least once a year; the account shall contain information on the exploitation of the work, all revenues generated and the remunerations due as regards all modes of exploitation of the work

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 information of such arrangements