140 YEARS LATER, LOOKING AHEAD

WHOSE RIGHT IS COPYRIGHT?

OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

October 9-11, 2025

Opatija, Croatia

QUESTIONNAIRE

ITALY

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?

Article 2576 of the civil code and article 6 of the Copyright Law prescribe: " Copyright shall be acquired on the creation of a work that constitutes the particular expression of an intellectual effort."

The provision implies that work can only be created by an individual, and therefore both moral and economic rights can initially belong solely to a natural person.

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 copyright in works created by two or more persons is granted to all the joint authors in common. The provisions on joint property apply, meaning that the agreement of all the co-authors is necessary to publish, to modify or to use the joint work. in the event of unjustified refusal by one or more joint authors, on request of the author, the authorization can be granted by the judicial authority.

Moral rights may be asserted, at any time individually by one of the joint authors.

In the absence of a written agreement to the contrary, the shares are presumed to be of equal value.

2 — Employers

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

According to uniform case law, in the absence of agreement to the contrary, the employer is entitled to exercise all economic rights in works created by an employee in the execution of his duties. In principle, the determination of the scope of employment is proven in writing.

The derivative automatic acquisition of copyright by the employer is expressly indicated in the copyright law for computer programs or databases.

3 — Commissioning parties

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

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

The commissioning party is entitled derivatively to the economic rights in works created in the execution of the commissioning agreement.

All copyright transfer agreements must be proven in written form . A contract is valid even if stipulated verbally, but witness evidence of its existence and content is admissible only in specific cases, such as the innocent loss of a written document.

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

In the case of a collective work, the person who organizes and directs its realization is considered the author (e.g. for newspaper the director who has the editorial responsibility; for encyclopedias, the person/s responsible for content selection and coordination, etc.). Distinct rules apply, however, to moral rights and to the exercise of the exploitation rights.

The protection of the collective work is autonomous and distinct from the protection granted to the individual contributions that remain with the respective authors even after their inclusion in the collective work. In the case of newspapers and magazines, in the absence of agreement to the contrary, the exploitation rights belong to the publisher, while the individual contributors have the right to utilize their own contributions separately, provided they comply with the existing agreements. The same happens for other collective works such as encyclopedias, where the publishing agreement does not state otherwise.

As to audiovisual works, the author of the subject-matter, the author of the scenario, the composer of the original music and the artistic director are considered joint-authors of a

cinematographic work (article 44 of the Copyright Law).The exercise of the authors' exploitation rights belongs to the movie producer. In the absence of a specific agreement, however, the producer does not automatically acquire the right to adapt, transform or translate the audiovisual work without the consent of the authors.

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

The Italian copyright law does not include any case of initial ownership vested in entity other than the human creator. Interpretative doubts have been raised, however, concerning the special case of the works created and published under the name and at the expense of the State, the Provinces or the Municipalities. In this case, said territorial public entities are entitled to copyright, but it is generally deemed that the original ownership, including moral rights, belongs to the author.

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?)

The AI generated output, even when it consists in matters equivalent to intellectual works, is not copyrightable pursuant to the current copyright law.

However, when works are created by individuals by means or with the assistance of AI, they can be copyrightable, but the protection is granted on the basis of the human contribution involved, on a case by case basis.

[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?

In principle, the initial ownership is determined on the basis of the country of origin; nonetheless, the actual protection of copyright is determined where the protection is claimed . Also the qualification as a work (e.g. in the case of AI generated products) is based on the law where the protection is claimed in compliance with Article 5, par. 2 of the Berne Convention. The principle of copyright territoriality is regulated on the basis of international private law (Law of May 31, 1995, n. 218, rules on conflicts of laws).

The applicable law is determined according to Regulation (EC) n. 593/2008 of June 2008 (Rome I); for noncontractual obligations, it is determined according to Regulation (EC) n. 864/2007 of July 11, 2007 (Rome II).

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, they cannot. Moral rights are inalienable. They can be transferred only mortis causa according to the special rules of the Copyright Law, that are different from the rules on inheritance in the civil code.

b. May the author contractually waive moral rights?

No, the clause on the waiver would be null and void. It should be noted, however, that the author can choose not to exercise the moral rights.

2 — Economic rights

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

An author can freely dispose of his/her economic rights, i.e. assign, license, use them as collateral and so on, provided that the rules on the consent and the form applicable to copyright agreements and to contracts in general are complied with.

The principle of contractual freedom has been mitigated by the amendments to the law following the implementation of Directive 2019/790 (EU) on Copyright and Related Rights in the Digital Single Market (the CDSM Directive), in particular through the introduction of paragraph 2 in Article 107, where it is stated that authors and performers have the right to receive a fair remuneration proportionate to the value of the rights licensed or transferred, commensurate with the revenues deriving from the rights exploitation, also taking into account the pertinent characteristics of the reference sector and possible collective bargaining agreements.

Since their introduction in 1998, the statutory rights to equitable remuneration, that are retained by audiovisual authors and performers after the assignment of their exclusive rights to the film producer, are explicitly defined as inalienable and unwaivable.

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

Specific rules are provided in the law in the case of economic rights for new forms of exploitation.

B. Transfers by operation of law

1 — Presumptions of transfer:

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)?

The film producer is entitled to the exercise of exploitation rights, which is equivalent to a rebuttable presumption of transfer. Said presumption operates in favour of the audiovisual producer for all the rights directly necessary for the typical exploitation of films and other AV works, while further rights (e.g. adaptation right) are exercised by the producer on the basis of the contractual agreement.

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

The general principle is contractual freedom, which means also that no rights are transferred by operation of law. Even the implicit presumption of rights transfer to the audiovisual producer is rebuttable by agreement.

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

The assignment of right is proven by the written contractual agreement between the authors (or the performers) and the producer. The transferees that acquire a license from the producer are obliged by law to pay to authors and performers an equitable remuneration by means of extended collective licenses. The amount and conditions are negotiated by the each CMO representing audiovisual authors or performers on the basis of the respective representativeness, pursuant to the rules on extended collective licenses introduced in 2021.

2 — Other transfers by operation of law?

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?

The assignment or the transfer must be proven in writing, but the written form is not required *ad substantiam*.

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

Only the rights necessary for or strictly related to the exploitation/s specified in the agreement are transferred on the basis of the agreement. The transfer does not include any rights that is not necessary for the exploitation covered by the agreement or explicitly indicated by it. However, the principle of contractual autonomy applies and even contracts providing full and perpetual right transfer are admissible, subject to the provisions on proportionate and equitable remuneration in article 107, as amended in 2021.

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

It depends on the type of the transfer contract. Pursuant to article 19 of the copyright law rights are independent of each other. The exercise of any one right shall not exclude or affect the exercise of the other rights.

According to the existing case law and to the prevailing practices, the transfer agreement should specify expressly the right/s that are covered in the contract and the economic terms and conditions relevant to each of the transferred rights.

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

This is admissible under certain conditions. If the contract relates to future works, where the contract concerns all the author's works or all the works of a certain category to be created in future, an express limitation in time is required, otherwise the clause on future works is null and void. The term cannot be in excess of 10 years, without prejudice to the transfers based on employment contracts and contracts for service.

If the future work is specified, but the term is not set, the publisher (the assignee) may at any time request the judicial authority to set term.

Moreover, when laws issued after the transfer contract grant new rights or provide a protection of wider scope or longer duration in favour of the author, these rights are not considered automatically included in the transfer; it may be doubted therefore that, in case of judiciary proceedings, the clauses granting perpetual assignment extending to future rights are deemed lawful.

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?)

As a general rule, the parties can choose the applicable law in their agreement on economic rights, except for rules that are considered relevant for public order. This principle is explicitly indicated in the provisions concerning the mechanism for contractual adjustment and the

transparency obligations. Said provisions are explicitly defined "of necessary application" pursuant to Article 3, paragraph 4, of EC Regulation no. 593/2008 of 17 June 2008 (Rome I).

Moral rights are inalienable and agreements that concern them are unenforceable in Italy.

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

The right to a proportionate and fair remuneration was introduced in the Copyright Law by the Decree implementing directive (UE) 2019/790.

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

The Copyright Law currently in force provides a mechanism to ensure that an additional remuneration is granted to the author or the performers when the initially agreed remuneration is disproportionate to the actual proceeds of the transferred exploitation right. A regulation of the Independent Authority for Communications governs the application of the new article on the contractual adjustment mechanism.

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

The copyright law provides a few specific cases of unwaivable remuneration right for audiovisual authors and performers

After the assignment of the exploitation rights, the authors and the performers of audiovisual works are entitled to a separate equitable remuneration for each use of the work (e.g. broadcasting or streaming on-demand, etc.) to be paid by the service provider. This remuneration is unavailable and inalienable.

Since 2021, after the transposition of Directive UE/2019/790, these remuneration rights are subject to collective licenses with extended effect; for this purpose, specific rules apply in relation to the plurality of collective management organizations operating in Italy.

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?

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

After the implementation of the CDSM directive in 2021, when the rights in a work or other protected matter are not exploited by the exclusive transferee, the author or the performer can act for the termination of the agreement, or revoke the exclusivity clause. The action can concern also part of the agreement, i.e. a single mode of exploitation. The exploitation must take place within the term contractually agreed, that cannot exceed five years, or two years following the availability of the work by the publisher or the producer.

Any derogation to these rules is unenforceable, unless provided for by a collective agreement.

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)

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

Following the CDSM Directive, the transparency requirements are strictly detailed in the Italian Copyright Law. A special regulation of the Authority for Communication details the features and content of the information to be periodically supplied to authors and performers.

The Authority can be called to intervene in case of disputes on the compliance with the transparency requirements and on the implementation of the contractual adjustment mechanism.

Administrative pecuniary sanctions can be imposed in case of non-compliance with the Authority's deliberations on the dispute relevant to the adjustment mechanism and the communication and information obligation.

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?

The typical publishing agreement has a maximum duration of 20 years. The 20 years term is deemed applicable only to publishing contracts for the publication of printed books; there have been several cases where the qualification of the contract has been disputed and normally music publishing agreement are considered not subject to this limit.

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

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

The so called repentance right is provided in the copyright law and the author exercising it should follow the procedure indicated in the law and indemnify the transferee in order to withdraw the work from the market. No precedents are available of the implementation of this rule.

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. More accurately, the rights granted in the streaming licenses are modelled according to directive 2001/26/EC (the Infosoc directive). Moreover, said licenses include also the reproduction right intended for the upload of the file of the work/performance/phonogram in the streaming service data base for the purpose of making it available to the public.

ii. Another right or a combination of rights?

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?

The communication right and the making available right are granted by law to authors and performers.

A remarkable difference, however, exists between musical and audiovisual works for both authors and performers.

The main exclusive rights (namely, reproduction and making available rights) in audiovisual works and audiovisual fixations are exercised by the audiovisual producer while, after the assignment, authors and performers retain a right to remuneration paid by the user (broadcasting organization, streaming service, etc.).

For musical works, authors and performers are granted exclusive rights that are exercised by the authors' collective organization (or possibly by the publishers or their assignees in the case of the so called Anglo-American repertoires). The rights in the performances fixed in phonograms are normally exercised by the relevant phonographic producer on behalf of the performer pursuant to the terms of their agreement.

Article 80 of the Copyright Law (as amended in 2021) specifies that, where the making available right is assigned to a phonographic producer, specific contractual clauses may grant the performer the right to receive, also through a CMO, a fair and proportionate remuneration. This indication is not mandatory and therefore in line with the general rules on contractual freedom described above.

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?

Yes, among the rules applicable to the publishing agreement that have been considered applicable to all transfer agreements, it is explicitly indicated that the contract may concern all or some of the exploitation rights of such scope and duration provided by the laws in force at the time of the contract is signed.

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, the communication right was not considered as a new right, being already covered by the comprehensive wording of the "old" article 16 of the copyright law, that specified that all communication at a distance was covered by the exclusive diffusion right.

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?

The audiovisual producers are granted the exercise of the exploitation right in the audiovisual works they produce and streaming has been assimilated to broadcasting right, except where a different contractual arrangement is signed between the author or performer and the producer.

3 — Remuneration

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

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?

Streaming exploitation is covered by the exclusive reproduction and making available rights. All remuneration due to authors and performers is governed by the contractual agreements with their assignees and licensees. The differences between audiovisual works (where after the

assignment an equitable remuneration is paid by the producer's licensees) and musical works are indicated in the previous answers.

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)?

See above the difference existing between audiovisual works and musical works.

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)?

Following the implementation of the CDSM directive and the implementation of a specific regulation of the Authority for Communications (AGCOM) in 2024, the "residual" mandatory remunerations related to audiovisual works are managed through extended collective licenses. Audiovisual authors or performers entitled to said remuneration can opt out of the ECL scheme. No opting-out precedent is available.

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?

The rules on transparency requirements and the AGCOM regulatory framework have been implemented only in recent years. The information must be delivered at least every six months, unless otherwise agreed between the parties; in no case the periodicity can pass one year. This obligation of communication and information lasts for the entire duration of the license or assignment agreement but, after the first three years, the authors and performers exercise their right by submitting a specific request.

The Authority for Communications is in charge of monitoring the compliance with the reporting and information obligations and can at any time ascertain violations of the obligations also through inspections, requests for information and documents, and hearings.

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)?

We are not aware of comparable cases in Italy. It should be noted, however, that the streaming licenses normally include the obligation for the service provider licensee to supply the detailed reports of the streams or views on a monthly or quarterly basis, and for the licensors (collective management organizations or publishers) to claim the works in their repertoire and to compensate possible overclaims. A specific mechanism is included in streaming licenses for possible "unclaimed" works.