

ALAI QUESTIONNAIRE OPATIJA 2025

ALAI MEXICO. OPATIJA 2025.

**Dr. Ricardo E. Larrea Soltero/Lic. Cristina Vega Garcia/Lic. Ana Sofía Larrea
Veloz/Luis Schmidt Ruiz del Moral**

140 YEARS LATER, LOOKING FORWARD

WHO OWNS COPYRIGHT?

OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

October 9–11, 2025
Opatija, Croatia

QUESTIONNAIRE

ALAI Mexico

Main source: Federal Copyright Law (LFDA), in force in Mexico; its Regulations; and international treaties ratified by Mexico, including the Berne Convention, TRIPS and USMCA.

I. INITIAL OWNERSHIP

A. To whom does the law of your country grant initial ownership? (Please indicate all that apply.)

1. The author (human creator) of the work

In Mexico, the LFDA recognizes that the initial ownership of copyright lies with the author, defined as the natural person who has created a literary or artistic work (Art. 5, section VI, LFDA). Only natural persons may be original right holders; non-human entities are not recognized as authors.

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

Article 5, section VI, establishes:

"Author: natural person who has created a literary or artistic work."

b. For joint works (works in which more than one creator has collaborated), does your law define joint authorship? What is the scope of ownership of each co-author? (Can joint authors exploit separately, or only by common agreement?)

Joint works (collaboration)

Article 80 LFDA defines a collaborative work as one jointly created by two or more authors whose contributions cannot be separated.

Economic rights belong jointly to all co-authors.

The exercise of economic rights requires unanimous agreement, unless otherwise stipulated (Art. 81 LFDA).

Each co-author may exploit his/her individual contribution if it is separable and does not affect the exploitation of the joint work.

2. Employers

a. Under what conditions, e.g., a formal written and signed employment contract? Creation of the work within the scope of employment?

Article 83 LFDA provides that, unless otherwise agreed: When a work is created under an employment relationship whose purpose is the production of intellectual works, the economic rights belong to the employer for the legal term of protection (life of the author + 100 years).

Moral rights always remain with the author.

Essential conditions:

- Existence of an employment relationship (formal or de facto).
- That the work is created within the contracted functions.

3. Commissioned works

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

Categories of commissioned works

Article 83 LFDA applies to all types of protected works, unless otherwise provided. The article states:

“Article 83.- Unless otherwise agreed, the natural or legal person who commissions the production of a work or produces it with the remunerated collaboration of others, shall enjoy ownership of the economic rights over it and shall have the powers relating to disclosure, integrity of the work, and collection regarding this type of creations.”

b. Under what conditions, e.g., a start-up agreement, in writing and signed by both parties?

Conditions:

For the commissioner to acquire initial ownership of economic rights it is required:

- An express agreement, preferably in writing, establishing that the work is commissioned and that the economic rights will belong to the commissioner.
- In the absence of such agreement, initial ownership remains with the author, although the commissioner may hold usage licenses.

4. The person or entity that takes the initiative in creating the work (e.g., producers; publishers) of certain types of works, for example, audiovisual works; collective works.

1.- Audiovisual works (Arts. 97–101 LFDA):

The producer is the initial holder of the economic rights over the audiovisual work as a whole, unless otherwise agreed.

The authors of contributions (screenwriter, director, composer) retain their moral rights and, regarding their individual works, the economic rights to exploit them separately, provided this does not affect the audiovisual work.

2.- Collective works (Art. 5 section VII and Art. 99 LFDA):

The natural or legal person who coordinates and discloses them under his/her name is the initial holder of the economic rights over the whole.

The collaborators retain moral and economic rights over separable contributions.

3.- Literary works

According to the Federal Copyright Law (LFDA) of Mexico, when an author enters into a publishing contract with a publisher, the author does not lose all rights.

The law clearly establishes what the author retains, even against the publisher:

1. **Moral rights (Arts. 18–21 LFDA)** – These are inalienable, non-waivable, imprescriptible, and always belong to the author:
 - Paternity: To be recognized as the author of the work.
 - Integrity: To oppose distortions, mutilations or modifications that damage reputation.
 - Modification: To make changes to the work, even after publication.
 - Withdrawal from commerce: To withdraw the work, compensating the publisher if applicable.
 - Anonymous or pseudonymous publication: To decide how the author's name is presented in the work.
2. **Economic rights not transferred (Arts. 27, 30, 83, 84, 85 LFDA)** – In a publishing contract, the author only transfers what is expressly agreed. The author therefore retains:
 - Exploitations not granted (e-book, audiobook, translations, adaptations).
 - Unmentioned territories.
 - Limited duration.

4.- Remuneration and control rights (Arts. 86–90 LFDA) – royalties, accounting, free copies.

5. Other cases of initial ownership granted to a person or entity other than the actual human creator

a. Works made for hire or under employment relationship
 Based on Arts. 83 and 84 LFDA.
 If a person (natural or legal) hires an author to create a work, the agreement may provide that the economic rights belong initially to the employer/commissioner.
 Example: A journalist writing a report as part of his/her employment in a newspaper.

b. Collective works
 Based on Art. 98 LFDA.
 The coordinator/publisher is the initial owner of the economic rights.

c. Computer programs
Based on Arts. 83, 84, 103 LFDA.
If created as part of employment or commissioned, the employer/commissioner is the original holder of economic rights.

d. Audiovisual works
Based on Art. 97 LFDA.
The producer is presumed the original holder of economic rights.

e. Works published by the State
Based on Arts. 148 and 149 LFDA.
Economic rights belong to the State, except otherwise agreed. Official works (laws, regulations, judgments) are public domain upon publication (Art. 13 LFDA).

6. If your country's law recognizes copyright in works generated by AI?

The LFDA does not recognize copyright for works created fully autonomously by AI.

"Author" can only be a natural person (Art. 5, section VI).

If AI is used as a tool and there is substantive human creative contribution, that person will be considered the author.

There is no provision granting original ownership to programmers, model developers, or data providers merely for creating the system.

*****On July of 2025, on amparo 6/2025, the Supreme Court of Justice in Mexico (SCJN) issued a ruling clearly establishing that artificial intelligence cannot be considered an author. Authorship protected under copyright law must vest in a natural person/human being.*****

B. CONSEQUENCES OF PRIVATE INTERNATIONAL LAW

1.- Applicable law to determine initial ownership in Mexico: the main rule is the principle of "*lex loci protectionis*"

- Copyright is governed by the law of the country where protection is sought (Arts. 13 and 14 Federal Civil Code; Art. 5.2 Berne Convention).

- The country of origin may be considered to determine the existence of the right and the status of the author, but ownership in Mexico is defined by the Federal Copyright Law (Ley Federal del Derecho de Autor – LFDA).

In practice:

- If protection is sought in Mexico, the LFDA applies, even if the work was created abroad.
- In multinational cases, the judge may consider the country with the closest connections as an interpretative criterion, but Mexican law prevails for purposes of protection within national territory.

II. TRANSFERS OF OWNERSHIP (Mexico)

A. Inalienability

1. Moral rights

a. Assignment to a licensee or collective management organization

In Mexico, moral rights are inalienable, imprescriptible, non-waivable, and non-seizable (Art. 19 LFDA).

- They cannot be transferred to a licensee of economic rights nor to a collective management organization.
- Collective management organizations may only administer economic rights; they do not acquire moral rights.

b. Contractual waiver

The author may not contractually waive his or her moral rights. Any clause to that effect would be null and void (*ipso iure*) (Arts. 19 and 30 LFDA).

2. Economic rights

a. Assignment and contractual waiver

Economic rights may be transferred either through assignment (transfer of ownership) or license (authorization of use), pursuant to Articles 30 and 31 LFDA.

- The author may assign or license economic rights by means of a written contract.

- The author may agree to contractual waivers regarding certain forms of exploitation, but not with respect to forms of use not expressly provided for in the contract, unless there is an explicit agreement in accordance with Art. 33 LFDA.

b. Limitations – new forms of exploitation

Article 30, second paragraph, LFDA provides that the assignment of economic rights does not extend to modes of exploitation unknown at the time of the contract, unless expressly stipulated. This protects the author against unforeseen technological uses not originally contemplated.

B. Transfers by operation of law

1. Presumptions of transfer

a. Categories of works

There are statutory presumptions of transfer for:

- Works created within an employment relationship (Art. 83 LFDA).
- Works made on commission (Art. 83 LFDA).
- Audiovisual works (Art. 97 LFDA, in favor of the producer).
- Collective works (Art. 5(VII) and Art. 99 LFDA, in favor of the person coordinating and publishing them).

b. Rebuttable character

These presumptions may be rebutted by evidence to the contrary, usually through a contract establishing different ownership.

c. Scope

Unless otherwise agreed, the presumption covers the economic rights necessary for the exploitation of the work according to its nature. Moral rights remain with the author.

d. Conditions

- Existence of an employment or commission contract, or a factual relationship implying the creation of works.
- In audiovisual works: a written production agreement (Art. 97 LFDA).
- Agreed remuneration or one determined by commercial practices.

2. Other transfers by effect of law

- Works in the public domain: they become free for use upon expiration of the protection term (Art. 147 LFDA).
 - Official works: public domain from the date of publication (Art. 13 LFDA).
 - Traditional cultural expressions: economic ownership belongs to the State (Art. 157 LFDA).
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C. Transfers by contractual agreement

1. Requirements for validity

- Must be in writing and signed by the parties (Art. 33 LFDA).
- Notarization or registration is not required, although contracts may be registered with the Public Copyright Registry for purposes of publicity and enforceability against third parties (Arts. 163 and 164 LFDA).

2. Specification of rights and scope

The contract must specify:

- Which rights are being transferred (reproduction, distribution, public communication, etc.).
- The modes of exploitation and the territory.
- The duration of the assignment or license.

If not specified, the transfer is limited to the modes and territory necessary to fulfill the object of the contract (Art. 31 LFDA).

3. General clause of total assignment

The LFDA allows the transfer of all economic rights, but it must be done with express language specifying scope, duration, and territory. General and imprecise clauses are interpreted restrictively in favor of the author (Art. 31 LFDA).

4. Assignment of rights over future works

Such assignment is valid if made in writing, but only for a maximum period of five years from the date of signature, unless it concerns periodic contributions to a publication (Art. 34 LFDA).

D. Private International Law

In matters of transfers, Mexico primarily applies:

- The law of the country where protection is claimed (*lex loci protectionis*).
- To determine the formal validity of a transfer, the law of the country with the closest connections to the contract and the parties may be considered, supplementing with the Federal Civil Code (Arts. 13 and 14 FCC).
- The country of origin of the work may influence the interpretation of initial ownership, but not the form or validity of transfers made for purposes of protection in Mexico.

Legal basis: Arts. 13 and 14 FCC; Arts. 5.2 and 5.3 Berne Convention; Arts. 30–34 LFDA.

III. CORRECTIVE MEASURES FOLLOWING THE TRANSFER OF RIGHTS, GRANTED TO AUTHORS OR PERFORMERS IN VIEW OF THEIR CONDITION AS WEAKER PARTIES (Mexico)

- Proportional remuneration (Arts. 26, 116, 131 LFDA).
- Termination if licensee does not exploit the work within 2 years (Art. 92 LFDA).
- Right to rescind for breach.
- Right of withdrawal (moral right of repentance, Art. 22 LFDA).

1. Guarantee of remuneration for authors and performers. Does Mexican law guarantee remuneration to authors and performing artists?

a. By requiring the payment of proportional remuneration in certain cases?

The LFDA provides that authors and performers must receive remuneration proportional to the revenues obtained from the exploitation of their works or performances, unless a lump-sum payment has been agreed upon under fair conditions (Arts. 26, 116 and 131 LFDA).

b. By a general requirement of adequate and proportional remuneration?

There is no explicit general clause as in certain European legislations, but Article 26 LFDA establishes that the assignment of economic rights must include equitable and proportional remuneration for the use of the work, unless otherwise agreed.

c. By contractual adjustment mechanisms?

The LFDA does not establish a general mechanism of revision for “disproportionately low remuneration,” but it does provide protection against injury or abuse of a dominant position, through supplementary application of the Federal Civil Code (Arts. 17, 17 Bis and 1796-Bis FCC).

d. Non-waivable rights to remuneration

Certain non-waivable rights exist, such as:

- Remuneration for private copying (Art. 40 Bis LFDA).
- Remuneration for the public communication of musical works in certain cases through collective management organizations (Arts. 131 and 133 LFDA).

2. Does the law require the licensee to exploit the work? Obligation to exploit the work

a. Obligation of continuous exploitation

Article 92 LFDA provides that, unless otherwise agreed, if the licensee does not exploit the work within two years of the assignment or license, the right is extinguished, and economic ownership reverts to the author.

b. Remedies for failure to exploit

The author may:

- Rescind the contract.
- Claim damages (Art. 92 LFDA and Arts. 2106 and 2108 FCC).

3. Obligation of transparency of the licensee

a. Form of the obligation

There is no general statutory obligation of periodic accounting under the LFDA, but:

- Assignment or license contracts usually include clauses on reporting and periodic royalty settlements.
- Collective management organizations are legally bound to inform and settle accounts with their members in accordance with Art. 202 LFDA.

b. Remedies for non-compliance

- Specific performance of the contract (Art. 2104 FCC).
- Rescission and claim for damages (Arts. 92 LFDA and 2106 FCC).

4. Unilateral right of rescission by the author or performer

a. Circumstances

I. After a certain period of time

Article 92 LFDA allows the author to rescind the assignment if the work is not exploited within two years, without judicial intervention.

II. For breach of obligations

Article 92 LFDA and the general rules on contractual breach (Arts. 2106 and 2110 FCC) allow rescission of the contract for non-exploitation, non-payment of royalties, or other essential breaches.

III. Exercise of the moral right of “withdrawal” (*derecho de arrepentimiento*)

Article 22 LFDA recognizes the right of the author to withdraw the work from circulation, subject to payment of compensation to the holder of the economic rights. Example: an author who, due to a change of convictions, withdraws a novel from publication and compensates the publisher accordingly.

IV. RIGHTS OF BROADCASTING, LICENSING AND MANAGEMENT OF LARGE CATALOGUES (Mexico)

- Based on Art. 27 LFDA and WCT.
- Applies to all categories of works.
- Assignment does not extend to unknown forms unless expressly agreed.
- Presumptions in audiovisual and phonogram production (Arts. 97, 116, 133 LFDA).
- Remuneration rights, including residual rights (Art. 131 LFDA).
- Collective management mandatory in some cases (Art. 40 Bis, Art. 131 LFDA).
- Transparency obligations for CMOs (Art. 202 LFDA).

1. Applicable legal framework

a. Statutory basis

In Mexico, the law governing the transmission of works and protected subject matter is as follows:

- For authors: the right of public communication, inspired by Article 8 of the WIPO Copyright Treaty (WCT) and codified in Article 27 LFDA. This includes the right of making works available interactively, so that any person may access them from the place and at the time of their choosing.
- For performers and phonogram producers: the right of making available and communicating to the public, pursuant to Articles 116 and 133 LFDA, in line with Articles 10 and 14 of the WIPO Performances and Phonograms Treaty (WPPT).

b. Coverage

- For authors: applies to all categories of works, including musical, literary, artistic, and audiovisual works (Art. 27 LFDA).
- For performers: covers both performances fixed in phonograms and audiovisual fixations (Arts. 116 and 133 LFDA).

2. Transfer of rights

a. Limitation to known forms of use

Article 30, second paragraph, LFDA provides that an assignment or license does not extend to modes of exploitation unknown at the time of the contract, unless expressly stipulated.

b. Introduction of the right

When the right of making available was introduced (2003 LFDA reform), it was regarded as a new mode of exploitation; therefore, for works created prior to the reform, specific authorization was required for such use.

c. Presumptions of transfer

In the case of phonograms and audiovisual works, it is presumed that the producer receives from the author and performers the necessary authorizations for exploitation, unless otherwise agreed (Arts. 97, 98, 116 and 133 LFDA).

3. Remuneration

a. Right to remuneration for transmission licensing

Yes. Authors and performers are entitled to remuneration for the public communication of their works or performances, either directly or through collective management organizations (Arts. 131 and 133 LFDA).

b. Residual rights

In certain cases, even after transferring or licensing the right, the author or performer retains a residual right to remuneration, as in the case of the public communication of musical works or phonograms (Art. 131 LFDA).

4. Collective management

a. Prescribed forms of collective management

Collective management in Mexico is generally voluntary, but mandatory for certain unwaivable rights, such as:

- Remuneration for the public communication of musical works (Art. 131 LFDA).
- Remuneration for private copying (Art. 40 Bis LFDA).

b. Management of residual rights

Yes, where the author or performer retains a residual right to remuneration, collective management may be mandatory (e.g., for the public performance of music, Art. 131 LFDA).

5. Transparency and management of large catalogues

a. Guarantee of periodic information

The LFDA does not impose a uniform reporting period for all licensees, but:

- Collective management organizations must report to their members at least once per year (Art. 202 LFDA).
- Private contracts may establish stricter reporting obligations (monthly, quarterly, etc.).

b. Case law on the complexity of rights chains

There is no published Mexican case law comparable to Eight Mile Style, LLC v. Spotify USA Inc. in the United States, but in Mexican practice, the complexity of ownership in large catalogues has been addressed through:

- Requirements to prove ownership before the IMPI.
- The use of collective management organizations as intermediaries to license dispersed rights.

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