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140 YEARS LATER, LOOKING AHEAD

WHOSE RIGHT IS COPYRIGHT?

OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

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QUESTIONNAIRE

-POLAND -

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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?

Art. 8 (1) of the Polish Copyright Law[1]provides that the initial ownership of copyright is vested in the author (creator), unless otherwise provided by law. This introduces what is considered to be a general principle of Polish copyright law, i.e. that copyright belongs to the author and that any exceptions must be expressly provided for in the law. The law does not define the term "author", nor does it define authorship. However, it is generally accepted that the author is a person (a natural person) whose creative efforts have created the work. Legal entities cannot be authors, although they can own copyright. Nor can non-human agents such as animals or AI's be authors.

The two exceptions to the general rule that copyright initially belongs to authors are: the producer or publisher in the case of a collective work (Article 11), and the employer in the case of a computer program created by the employee in the course of his or her duties (Article 74(3)).

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)?

[1] Act on Copyright and Related Rights Journal of Laws 1994 No. 24, item 83, consolidated text: Journal of Laws of 2025, item 24.

The law does not define co-authorship (joint authorship), although it regulates some of its aspects. To be a joint author requires a creative contribution to the jointly created work and, according to the prevailing view, at least a general understanding between the collaborating persons that they are participating in a common creative process. Joint authors own shares in the joint right, and these shares should be commensurate with their creative contribution. If the value of the shares cannot be determined, it is assumed that they are equal. The legal nature of co-authorship is similar to co-ownership in property law. The Copyright Act refers to the civil law rules on co-ownership in matters that are not specifically regulated for copyright co-authorship.

According to Art. 9 (1) of the Act, co-authors exercise the copyright jointly. This means that, as a rule, the exploitation of the joint work should be carried out by all joint authors acting together. Art. 9 (3) explicitly states that the consent of all co-authors is required to exercise copyright in respect of the whole work. In the absence of such consent, any of the co-authors may seek a court decision, and the court should consider the interests of all co-authors in making its decision.

Co-authors may exercise copyright individually only with respect to their contributions that have "an autonomous value" (Art. 9 (2)). This means that in some cases the contributions of individual co-authors may be used separately from the work as a whole (for example, music composed for a film may be used separately from the film as a soundtrack). Co-authors may also sue individually for copyright infringement of the entire work. However, any compensation, damages, etc. obtained in this way must then be divided among all co-authors according to their shares.

2 — Employers

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

Except for computer programs (Art. 74(3)), employers are not initial owners of copyright. Employers can acquire copyright under Art. 12 of the Copyright Act, according to which "*unless otherwise provided by law or an employment contract, an employer whose employee has created a work in the course of performing their duties under an employment relationship shall acquire, upon acceptance of the work, copyright rights within the limits resulting from the purpose of the employment contract and the mutual intention of the parties*."

This rule can be modified to some extent by the parties in the employment contract, but two conditions are always necessary. Firstly, it applies only to employees in the sense of labour law. In most cases, this means that there must be an employment contract (although Polish law knows some other possible grounds for employment relationships). Typically, employment contracts should be made in writing, but under Polish law a written form, although mandatory, is not required for the contract's validity. Art. 12 of the law does not apply to other forms of cooperation, even if their economic consequences are very similar to those of employment. Contracts for work, commissions, etc. do not have the consequences mentioned in Art. 12 and require a transfer of copyright according to the general rules (Art. 41 et seq. of the Copyright Act). Second, the work must be created by an employee in the course of his or her employment duties. The scope of such duties must be derived from the contract or other applicable rules.

Works created by an employee outside the scope of his or her duties remain with the employee. Such circumstances as whether a work was created during working hours, on the employer's premises, or using the employer's equipment are of secondary importance.

As noted above, the prevailing view is that other aspects of Article 12 can be modified by contract. For example, Art. 12 is based on the assumption that the employee must present the work to the employer and that the employer acquires copyright upon acceptance of the work. Employers often wish to acquire copyright at the time the work is created. Moreover, the scope of the rights acquired by the employer is considered very imprecise under Art. 12 (according to which it should be determined by the purpose of the employment contract and the mutual intention of the parties) and therefore employment contracts may contain more specific provisions defining such scope. However, except for computer programs created by employees in the course of their duties, employers can never become initial owners of copyrights.

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 Copyright Act does not introduce any specific rules for commissioned works in the sense that the acquisition of rights to such works by the commissioning party must follow the general rules for copyright contracts established in Art. 41 et seq. of the Copyright Act. Because of these rules, if there is no specific mention of copyright in such a contract, there can be no transfer of copyright. In certain circumstances a non-exclusive license may be implied, but this depends on the facts of the case. It is not possible for any commissioning party to become the initial owner of copyright.

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 is one case in which such entities or persons may be first owners of copyright. Art. 11 of the Law states that the copyright of a collective work, in particular an encyclopaedia or a periodical, belongs to the producer or publisher, while the rights to the individual parts that have an independent significance belong to their creators. It is presumed that the producer or publisher has the right to the title.

For audiovisual works the law creates only a presumption of transfer (according to art. 70 (1) it is presumed that the producer of an audiovisual work acquires, by virtue of a contract for the creation of a work or a contract for the use of an existing work, exclusive economic rights to exploit those works within the audiovisual work as a whole.). This will, however, never lead to initial ownership.

As regards neighbouring rights, producers are initial owners of the phonogram/videogram rights.

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

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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?)

According to the prevailing view, Polish law follows what seems to be the most common (internationally) approach to AI-generated works. Works, or rather subject matter, created by AI without any creative contribution by a human are not recognised as copyrightable works. If there is sufficient creative contribution by a human, it is in principle possible to recognize copyright protection, and ownership of such a work will follow the rules applicable to the human contribution. For example, if an employee uses AI to create computer programs and the employee's contribution meets the standard of originality, the employer will own the rights under Art. 74 (3) of the Copyright Law. For all other works, the employer can only acquire copyright to the extent permitted by Art. 12 of the law (i.e. the initial owner is the employee). For individual creators, the author (the human person who interacted with the AI tool) is the initial owner.

[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 order to determine initial ownership, Polish courts should look to the law of the country indicated by the applicable private international law rule. Since initial ownership is currently outside the scope of EU-wide instruments such as the Rome I and Rome II Regulations, the Polish Private International Law Act (PILA) must be applied. This Act contains provisions on the law applicable to intellectual property rights. According to its Art. 46 (1) PILA, "*the creation, content and termination of intellectual property rights shall be governed by the law of the country in which those rights are exercised.*" Since the issue of first ownership is inextricably linked to the creation of the work, the cited provision points in the direction of *lex loci protectionis*. While some authors favoured the law of the country of origin prior to the enactment of the current law (2011), this view would be contrary to the law under that Act.

Art. 47 of the Private International Law Act introduces a special provision for employee creations. It provides that the rights of an employee vis-à-vis his employer in respect of intellectual property rights relating to his activities within the framework of the employment relationship are governed by the law applicable to that relationship. Consequently, as an exception to the *lex loci*

protectionis rule, the law applicable to the employment relationship will also govern the question of the initial ownership of the copyright.

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 inalienable (non-transferable), and therefore cannot be granted to the holder of economic rights. The inalienability of moral rights is their universal feature and does not depend on the characteristics of the acquirer. Collective management organizations (CMOs) cannot acquire such rights.

There is a gray area as to what is contractually permissible with respect to moral rights, e.g., whether consent to exercise those rights may be similar to a license, or whether it is possible to authorize another person to exercise those rights and under what conditions, but such measures will never make the "grantee" the owner of the moral rights.

b. May the author contractually waive moral rights?

Authors may not waive moral rights. Art. 16 of the Copyright Law states that, except as otherwise provided by law, copyright protects the relationship between the author and the work, which is unlimited in time and cannot be waived or transferred. There are no statutory exceptions to the prohibition against waiver. Authors can therefore only undertake not to exercise their moral rights. The prevailing view is that such undertakings should be specific and typically limited in time. Their validity must be analysed on a case-by-case basis.

2 — Economic rights

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

Economic rights can be transferred, not just licensed. The important caveat here is that Polish copyright law treats economic copyright as a set of separate rights to use copyrighted works in different ways (called "fields of exploitation"). For this reason (as explained below under C), it is not possible to transfer copyright as a whole in the same way that it is possible to transfer property under civil law or even other types of intellectual property rights such as patents.

The law does not explicitly refer to waiver (unlike moral rights, where it is explicitly excluded). However, the prevailing view is that economic rights cannot be waived either. The reason, or one of the reasons, is the lack of specific rules. Usually, when the law allows the waiver of rights, it introduces certain rules that take into account how such a waiver may affect third parties and legal certainty. Precisely because there are no such rules for waiving authors' economic rights, it is assumed that it would not be permitted.

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 two such restrictions. First, it is not allowed to transfer or license a copyright with respect to fields of exploitation unknown at the time of the transfer/license (Art. 41 (4)). Any such assignment or license is void.

The term "field of exploitation" refers to an economically (and usually technically) distinct and separate way of using copyrighted works. Fields of exploitation are typically narrower than exclusive rights such as the right of reproduction or the right of communication to the public. For example, within the right of communication to the public, one can distinguish such fields as broadcasting, public performance or display, making available to the public in such a way that the public can access the work from a place and at a time chosen by them. The concept of the field of exploitation is not fixed. In particular, it is possible, but only to a certain extent, to distinguish even narrower fields (e.g. broadcasting can be divided into terrestrial and satellite, making available into streaming and download, etc.). However, it can be assumed that at least the fields explicitly listed in Art. 50 of the Act:

Separate fields of exploitation include, in particular:

1) with regard to fixation and reproduction of a work – the production of copies of a work using a specific technique, including printing, reprography, magnetic recording and digital techniques;

2) with regard to distributing the original or copies on which the work has been fixed – placing the original or copies on the market, lending or renting them;

3) with regard to the dissemination of the work in a manner other than that specified in point 2 - public performance, exhibition, display, broadcasting and rebroadcasting, as well as making the work publicly available in such a way that everyone can have access to it at a place and time of their choosing.

A field of use that is unknown at the time of the contract is not necessarily a type of use that is completely unimaginable at that time (if it were, it could not be described), but a type of use that is so uncertain that it is not reasonably possible to consider its value.

Second, it is not permitted to transfer or license the copyright in all works, or in all works of a particular type to be created in the future by the same creator. This provision is not always applied literally and requires some nuance in interpretation. For example, contracts entered into for a limited period of time, but long enough to be reasonably expected to cover all works to be created in the future, are covered.

B. Transfers by operation of law

1 — Presumptions of transfer:

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

If "presumption of transfer" means a rule according to which a transfer takes place in the absence of an agreement to the contrary, Polish copyright law provides for the following presumptions:

- The employer acquires the copyright in works created by employees in the course of their employment (Art. 12 of the Act).
- It is presumed that the producer/publisher owns the rights to the title of the collective work (Art. 11 of the Act), although this does not change the requirement of originality and the vast majority of titles are not protected by copyright.
- A scientific institution (e.g. a university) is presumed to have the right of first publication of a scientific work created by its employee within the scope of his or her employment (Art. 14 of the Act).
- It is presumed that the producer of an audiovisual work acquires, by virtue of a contract for the creation of a work or a contract for the use of an existing work, exclusive economic rights to exploit these works within the audiovisual work as a whole (Art. 70, para. 1 of the Act).
- Unless otherwise provided in the contract, the conclusion of a contract between a performing artist and a producer of an audiovisual work on participation in the production of an audiovisual work transfers to the producer the rights to dispose of and use the performance within the audiovisual work in all fields of exploitation known at the time of conclusion of the contract (Art. 87 of the Act).

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

All presumptions are rebuttable. In most cases, rebuttal requires a valid agreement between the parties (e.g., an employment contract stating that the employee retains copyright).

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

The scope of the transfer is limited, although it can be broad (as in the case of the employer). With respect to audiovisual works, the presumptions are broad, but apply to the use of the rights within the audiovisual work as a whole.

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

The existing presumptions do not introduce additional conditions that would go beyond the presumption's premise. For example, a presumed assignment to the employer requires an employment relationship. Any employment relationship recognized by labour law will suffice, and since labour law does not require written form for validity, the presumption does not require a written contract.

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 transfer of copyright must be made in writing or it is null and void. In Polish law, this means that the document must be signed either with a handwritten signature or electronically, whereby electronically means with a qualified electronic signature within the meaning of Art. 78[1] § 1 of the Civil Code. Since transfers are contracts (a unilateral transfer is not possible), they must be signed by both parties. Witnesses are not required, nor is a record of the transfer (there is no register where this could be done).

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

Polish law requires that any license or assignment shall specify all fields of exploitation. Art. Art. 41(2) of the Copyright Act stipulates that the agreement on the transfer of copyright rights or the license covers the areas of exploitation expressly mentioned therein. In Polish legal literature this is called: the rule of specification. The generally accepted purpose of this rule is to try to limit the scope of the transfer (license) by making it clear to the author what the signed agreement entails. The other reason is legal certainty. Since there is no copyright registry, economic rights can be divided into narrower rights, and there is no protection for third parties acting in good faith, it is essential to ensure that the scope of any transfer can be determined.

In practice, some courts try to limit the strictness of the rule by applying general principles of contract interpretation to copyright contracts (and thus determining what the parties intended to license or transfer without explicitly stating so in the contract), but the case law is not consistent and there are limits to such attempts, especially with respect to copyright transfers (since these must be in writing, it becomes increasingly difficult to argue that an unmentioned field of use can be interpreted into the contract).

If a field of use is not specified, the contract is not effective with respect to that field (no rights are transferred with respect to that field). If no fields are specified, the Agreement shall be deemed invalid for lack of subject matter.

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

The principle of specification and the prohibition of transfers with respect to future fields of use make it impossible to transfer all economic rights by means of a general contractual clause. Instead, in contractual practice, transfer clauses are extensive and often overly detailed, as the parties (or more precisely, the purchasers) try to list and precisely describe every existing type of use.

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

As mentioned above, Polish law does not permit the assignment of all rights in all future works. However, with the aforementioned "all rights" proviso (see Q3 above), it would permit the assignment of "all" rights in one or more future works, provided that they are not all of the author's future works or all of a particular category of the author's future works.

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 question of alienability or inalienability of rights is considered "non-contractual" in the sense that it should be governed by the law applicable to the rights as such and not by the law applicable to the contract. Consequently, the principle of *lex loci protectionis* applies. This is expressly recognized in Art. 46(2) of the Private International Law Act.

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?

Polish law has long recognised the principle that copyright grants should be remunerated. The current Art. 43 of the Act was amended (2024) in the course of the implementation of the DSM Directive and states (paragraph 2) that "*the remuneration shall be fair and reasonable having regard to the scope of the right granted, the nature and extent of the use and the benefits derived from the use of the work*". Art. 43 (3) adds that *"[it] shall be presumed that a remuneration proportional to the income derived from the use of the work satisfies the requirements of paragraph 2*".

These provisions are relatively new and have not yet been the subject of extensive litigation, so many detailed issues remain unclear. A literal interpretation of Art. 43 (2) could mean that a contract that does not provide for fair and adequate remuneration is invalid[2], which would create many practical problems and much legal uncertainty. In our view, this interpretation should be rejected.

The law does not require proportional remuneration in every case (nor are there specific provisions requiring proportional remuneration in certain cases, except for residual

[2] It is theoretically possible to argue that the bestseller clause only applies when the imbalance appeared later, i.e. after the conclusion of the contract.

remuneration - see below under d)), but rather encourages proportional remuneration by giving it a presumption of fairness. More time is needed to assess the impact of these new rules on contractual practice.

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

The so-called bestseller clause has existed in Polish law for many years (it was already included in the original version of the 1994 Act). This provision (Art. 44) has been slightly revised (2024) due to the implementation of the DSM Directive and now reads as follows

1. Where the author's remuneration is disproportionately low in relation to the benefits enjoyed by the purchaser of copyright rights or the licensee, the author may request the court to increase the remuneration accordingly.

2. The provision of paragraph 1 shall not apply to agreements on the use of works concluded with a collective management organisation of copyright or with an independent management entity referred to in Article 2(1)(3) of the Act on collective management of copyright and related rights.

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

Polish law provides for an inalienable right of remuneration in the case of audiovisual works. Art. 70 (2^1) of the Act states that co-creators of audiovisual works and performing artists are entitled to:

1) remuneration proportional to the revenue generated from the screening of audiovisual works in cinemas;

2) appropriate remuneration for the rental of copies of audiovisual works and their public reproduction;

3) appropriate remuneration for broadcasting the work on television or through other means of public communication;

4) appropriate remuneration for reproducing the audiovisual work on a copy intended for personal use;

5) appropriate remuneration for making a work publicly available in such a way that anyone can have access to it at a place and time of their choosing;

6) appropriate remuneration for rebroadcasting a work.

These rights are subject to mandatory collective management.

Art. 86^1 of the Copyright Act introduces residual remuneration also for performing artists of literary, journalistic, scientific, musical or verbal-musical works, including performing artists who have adapted such works for the making available of artistic performances in such a way that everyone can have access to them at a place and time of their choosing.

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?

Polish law does not introduce a general obligation to exploit the work, let alone for each type of exploitation granted. It does, however, provide for remedies where the grantee has undertaken to exploit the work but has failed to do so (see below, p. 4).

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

If the grantee has not undertaken to exploit the work, it may be possible to apply Art. 56 (1) of the Act, according to which the author may withdraw from or terminate the agreement on the grounds of their significant creative interests. Lack of exploitation is not automatically a violation of "substantial creative interests," but it may be in certain circumstances.

If the obligation to exploit the work is either explicit or implicit in the contract, other than termination (see p. 4 below), failure to exploit the work would constitute a breach of the contract and entitle the author to contractual remedies such as damages.

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)

Statutory transparency obligations have been introduced, particularly in relation to remuneration. The right to information predates the DSM Directive, but has been developed in the course of its implementation. The new Art. 47^1 of the Act provides that the author has the right to receive from the person to whom he/she has transferred copyright rights or from the person to whom he/she has granted a license periodic information on the income from the use of his/her work and the remuneration due in connection with such use, separately for each type of use. The information may be used by the author solely for the purpose of determining the economic value of the rights transferred or licensed.

There is no explicit obligation to notify the copyright holder of sublicenses, but a licensee is only authorised to grant a sublicense if the license agreement permits it. Therefore, it can be expected that the agreement will also require the licensee to notify the licensor of the sublicenses granted.

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

If there is a transparency obligation, either because it arises from the law or from the contract, the most obvious remedy is contractual. Even if the obligation is in the law, it is considered part of the contractual agreement. This means that the author/owner can:

- Pursue damages;
- Pursue the enforcement of the obligation (the practical side of this type of remedy may prove complicated);

- Notify the grantee of the breach of contract demanding that it be remedied within the specified amount of time and (if the breach is not repaired) terminate the contract.

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?

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?)

There are three cases in which the law explicitly allows authors (or performers) to unilaterally terminate the grant of rights.

The first is the already mentioned art. 56 allowing authors to withdraw from or terminate the agreement on the grounds of their significant creative interests. It may be considered a general clause due to the vagueness of the concept of "significant creative interests", however it is believed that this provision should not be overused. The right in question does not apply to architectural and architectural-urban works, audiovisual works and works commissioned for use in an audiovisual work.

The second is when the grantee has undertaken, but failed to, exploit[3] the work. According to art. 57 (1) if the assignee of copyright rights or the licensee to whom an exclusive licence has been granted, who is obliged to disseminate the work, fails to disseminate it within the agreed time limit, the author may set an additional time limit not shorter than six months, with the proviso that if this deadline expires without effect, the author shall be entitled to withdraw from or terminate the agreement. According to art. 57 (2) the author may also withdraw from or terminate the agreement if the assignee or exclusive licensee obliged to disseminate the work, fails to do so within five years, and in the case of architectural, architectural and urban planning, and urban planning works - within twenty years from the date of transfer of copyright property rights or granting of an exclusive licence.

Pursuant to Art. 57 (3), an author who has granted an exclusive license may, after the expiration of the additional period for the dissemination of the work referred to in paragraphs 1 and 2, grant a license to other persons instead of terminating the contract. This means that the exclusive license effectively becomes a non-exclusive license.

The third is when the work is made available to the public in an inappropriate form or with modifications to which the author could legitimately object. Art. 58 of the Act allows the author

[3] This does not apply if the exploitation does not require dissemination.

to withdraw from or terminate the contract after an unsuccessful request to cease the infringement.

The above provisions contain additional rules concerning, inter alia, remuneration and other rights and obligations of the parties. The term "disseminate" used above means in Polish law what would be considered distribution and communication to the public under EU law (including communication to the public where the public is present in the place from which the act of communication originates).

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?

ii. Another right or a combination of rights?

The rights necessary for streaming are the making available right (part of the communication of the public right as in art. 3 of the directive 2001/29/EC) and also the reproduction right. The making available right has been modelled after the directive and therefore it can be said that it has also been 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.

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 rights cover both musical and audiovisual works. For performers, it does not matter whether the performance has been fixed in a phonogram or videogram (audiovisual fixation).

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?

In Poland, assignments or licenses covering fields of use unknown at the time of the assignment/license are not permitted. See II.2 b) above.

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?

Strictly speaking, because the catalogue of fields of use is and has been open, when Art. 50 of the Copyright Act was amended to reflect the wording derived from the InfoSoc Directive and the WIPO Treaties (in 2003), this did not mean that only from that point on making available could be considered as a separate field of use. The question should therefore be when this type of use became "known" in the sense that it was sufficiently well understood in economic terms.

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 making available right is subject to the same presumption of transfer as all other rights (see above II.B).

3 — Remuneration

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

Authors and performers are entitled to remuneration for streaming according to the general rules.

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?

Co-authors of audiovisual works are entitled to a non-waivable residual remuneration right as explained above (III.1.d). The same applies to performing artists (art. 86^1 of the Act, see above III.1.d).

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 possible for all categories of rights. Mandatory collective management applies only to the residual remuneration rights of co-authors and performers in respect of audiovisual works.

As the term "extended collective management" is not very precise, it should be added that in Poland Art. 5 (1) of the Act on Collective Management of Copyright and Related Rights introduces what can be understood as a form of presumption of representation ("*It shall be presumed that a collective management organization is authorized to collectively manage copyright or related rights within the scope of the authorization granted to it and has legal standing in this matter*").

This presumption may allow CMOs to include rights not entrusted to them by rightholders, but the presumption can be rebutted.

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)?

Mandatory collective management in the case of remuneration for co-authors and performers of audiovisual works.

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?

Polish law does not provide specific rules for streaming or, more generally, for the right of making available when it comes to transparency obligations. Consequently, the general rules apply. This points in the direction of Art. 47-47[1] of the Copyright Act:

Article 47: If the author's remuneration depends on the amount of revenue generated from the use of the work, the creator shall have the right to:

1)receive information that is relevant for determining the amount of such remuneration in cases where the provision of Article 47[1] does not apply;

2) inspect, to the extent necessary, the documentation relevant to determining the amount of such remuneration.

Article 47[1]: 1. The author shall have the right to receive, on a regular basis, from the person to whom he has transferred his copyright rights or from the person to whom he has granted a licence, up-to-date information on the revenue from the use of his work and on the remuneration due in connection with such use, separately for each type of use. The information may be used by the author solely for the purpose of determining the economic value of the rights transferred or licensed.

2. The information referred to in paragraph 1 shall be provided at intervals appropriate to the type of activity in which the work is used, at least once a year and no more than once a quarter.

3. If the persons referred to in paragraph 1 have subsequently transferred the property rights or granted a licence and therefore do not have the full information referred to in paragraph 1, they

shall notify the author of this fact and, at his request, provide him with the name and place of residence or registered office, address and e-mail address of the acquirer of the rights or the licensee. In such a case, the missing information shall be provided by the acquirer or licensee at the request of the author.

4. The provisions of paragraphs 1-3 shall not apply where the creative contribution is not significant in relation to the whole used, unless the creator who requests the information referred to in paragraph 1 proves that this information is necessary for the exercise of the right referred to in Article 44. In the case of a collective work, a collection of works and a co-authored work other than a literary, journalistic, scientific, musical or verbal-musical work, it shall be presumed that the creative contribution is not significant in relation to the whole used. In the case of an audiovisual work, this presumption shall not apply to the director, cinematographer, creator of an adaptation of a literary work, creator of musical or verbal-musical works created for the audiovisual work, or creator of the screenplay.

5. In justified cases, if the costs or administrative burden associated with the implementation of the obligation under paragraphs 1 or 3 would prove disproportionately burdensome in relation to the revenue from the use of the work, the fulfilment of the obligation may be limited to information on the total revenue from the use of the work and the total remuneration due in connection with such use.

6. The provisions of paragraphs 1-5 shall not apply to use based on:

1) an agreement for the use of works concluded with a collective management organisation of copyright or with an independent management entity referred to in Article 2(1)(3) of the Act on collective management of copyright and related rights;

2) a free licence granted by the creator to the general public;

3) the acquisition of rights referred to in Article 12.

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 any such case law.