140 YEARS LATER, LOOKING AHEAD

WHOSE RIGHT IS COPYRIGHT?

OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

October 9-11, 2025

Opatija, Croatia

QUESTIONNAIRE

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 Portuguese legislation does not have a direct definition of author. Yet, it says that the holder of the Copyright is the creator of the work (Article 11 of the Copyright and Related Rights Code, herein CRRC)

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)?

Yes, PT law has rules about joint works. Article 18th of the CRRC refers:

1. *Any of the authors may ask for the diffusion, publication, exploitation, or amendment of the joint work, and, in case of disagreement among the different authors, any issue should be solved according to good faith principles.*
2. *Any of the joint authors may, without prejudice to the common exploitation of the joint work, exercise individually his/her rights related to the respective contribution share of the joint work, if this share can be identified.*

2 — Employers

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

CRRC addresses this in Article 14, which reads:

"Determination of ownership in exceptional cases

1 - Without prejudice to the provisions of article 174, the ownership of copyright relating to a work made ordered or on behalf of others, whether in fulfilment of a functional duty or an employment contract, shall be determined in accordance with what has been agreed.

2 - In the absence of an agreement, it shall be presumed that ownership of the copyright in a work made for hire or reward belongs to its intellectual creator.

3 - The fact that the name of the creator of the work is not mentioned in the work or does not appear in the place intended for this purpose according to universal usage shall constitute a presumption that the copyright belongs to the entity on whose behalf the work is made.

4 - Even when the ownership of the patrimonial content of the copyright belongs to the person for whom the work is made, its intellectual creator may demand, in

addition to the adjusted remuneration and independently of the very fact of disclosure or publication, a special remuneration:

a) When the intellectual creation clearly exceeds the performance, even if zealous, of the function or task entrusted to him/her;

b) When the work is used or benefits are derived that were not included or foreseen in the setting of the adjusted remuneration."

3 — Commissioning parties

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

Article 14 applies to all commissioned works, except journalistic works, to which Article 174(1) CRRC applies, stipulating that

"*…The copyright on journalistic work produced in fulfilment of an employment contract that includes identification of authorship, by signature or otherwise, belongs to the author. "*

The framework of journalistic works is complemented by provisions from the Statute of Journalists, (Law 1/99 of 13th January, modified by Law no. 64/2007 of 6th November, which states in its Article 7-A that:

"1- Intellectual creations by journalists, expressed in any form, namely articles, interviews or reports that are not limited to the dissemination of daily news or the reporting of various events in the form of simple information, and which reflect their individual capacity for composition and expression, are considered works protected under the terms of the Copyright and Related Rights Code and this law.

2 - Journalists have the right to sign, or to identify with their professional name, registered with the Professional Journalists' Card Commission, the works they have authored or in which they have participated, as well as the right to claim their authorship at any time, namely for the purposes of recognising their respective copyright.

3 - Journalists have the right to oppose any modification that distorts their works or that may affect their good name or reputation.

4 - Journalists may not oppose formal modifications made to their works by journalists who perform functions as their hierarchical superiors in the same editorial structure, provided that these are dictated by the need for scaling or linguistic correction, but they may to refuse to have their name associated with a journalistic piece whose final draft they do not recognise or with which they do not agree.

5 - The advance transfer or encumbrance of the patrimonial content of copyright on future works by occasional or independent contributors may only cover those that the author will produce within a maximum period of five years.

Furthermore, according to Article 7-B of the same Statute of Journalists:

"Copyright of salaried journalists

1 - Except as provided for in paragraph 3, journalists who carry out their activity under an employment contract are entitled to separate remuneration for the use of their works protected by copyright.

2 - Except in the cases provided for in the following paragraph, authorisations for any communication to the public of the intellectual creations of salaried journalists, or the transfer, in whole or in part, of their economic copyright, shall be established through specific contractual provisions, in the form required by law, which must contain the rights covered and the conditions of time, place and price applicable to their use.

3 - The right to use copyright-protected works for informational purposes for a period of 30 days from their first availability to the public in each of the media outlets and respective websites owned by the company or economic group to which the journalists are contractually bound shall be deemed to be included in the scope of the employment contract.

4 - Pending the formalisation of a new agreement with the employer and for a maximum period of three months, the use of works produced during the term of an employment contract involving modes of exploitation that did not exist or could not be determined at the date of conclusion of the previous agreements of use shall be presumed to be authorised by the author.

5 - Article 174(2) of the Copyright and Related Rights Code shall apply, with the necessary adaptations, to other means of communication of journalistic works to the public."

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

Only if it is a valid contract.

4 — The person or entity who takes the initiative of the work's creation (e.g. producers; publishers; broadcasters) of certain kinds of works, e.g., audiovisual works; collective works (newspapers are collective works by definition)

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

Apart from the Copyright of journalistic works, all rights can be transferred. Yet, according to Article 42 CRRC:
"Neither the powers granted for the protection of moral rights nor any others excluded by law may be transferred or encumbered, whether voluntarily or by force."

The Code distinguishes between a full transfer of Copyright, encompassing every power, a partial transfer, and a licence. In these two cases, the scope of such transfer must be precisely defined in writing.

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

The Code allows Copyright to be invested in a moral person, such as a Company, from the start, under the provisions referred to in 3 and 4 above, under art 14 or in the case of a newspaper (under Art.19(3)).

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 Portuguese law does not recognize AI-generated works.

[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 of origin. According to Art. 48 of the Civil Code, Copyright is determined by the law of the place where the work has originally been published.

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. As referred above, according to Article 42 CRRC, moral rights are not transferable.

b. May the author contractually waive moral rights?

No, according to the same provision.

2 — Economic rights

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

Yes, the patrimonial part of rights can be transferred, waived, or encumbered. Yet, some conditions should be observed, according to Article 43 CRRC:

"1 - Partial transfers or encumbrances have as their mere object the modes of use designated in the act that determines them.
2 - Contracts for the partial transfer or encumbrance of copyright must be set out in a written document with notarised signatures, under penalty of nullity.
3 - The title must set out the faculties which are the object of the provision and the conditions for exercising them, specifically as regards time and place, and, if the deal is onerous, the price.
4 - If the transfer or encumbrance is transitory and no duration has been established, it shall be presumed that the maximum duration is 25 years in general and 10 years in the case of photographic works or works of applied art.
5 - However, the exclusive licence shall lapse if the work has not been used after seven years."

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

Limitations concerning new, unknown forms of exploitation or future works are dealt with in Article 38 CRRC on early disposal of copyright:

"1 - The transfer or encumbrance of copyright on future works may only cover those that the author will produce within a maximum period of 10 years.
2 - If the contract is for works produced within a longer period, it shall be deemed to be reduced to the limits of the previous paragraph, with a proportional reduction in the stipulated remuneration.
3 - A contract for the transfer or encumbrance of future works without a limited term is null and void."

B. Transfers by operation of law

1 — Presumptions of transfer:

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

Audiovisual works under Art 127 CRRC: Photographs under Art 165(2) CRRC, but, in this case, only in case of work made for hire or labour contract. Rights over performances, under Article 178(2) CRRC, based on performance agreement.

The rights over software developed by an employee within the range of their duties, under employer guidance, or as a work-for-hire, belong to the person for whom the software is created, except if the contrary arises from the purpose of the contract or is specifically stipulated. This frule stems from Decree-Law No. 252/94 of 20th October, as modified by Decree-Law No. 334/97 of 27th November and Law 92/2019 of 4th September transposing Directive 91/250/EEC later codified by Directive 2009/24/CE of 23rd April (Software Directive).

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

In the case of Art 127 CRRC only a specific contractual provision can rebut the presumption (see below). In the case of Art. 165(2) CRRC, any evidence can be acceptable to rebut the presumption. In the case of software, the presumption may be rebutted by the purpose of the contract or if there is a specific stipulation otherwise.

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

Under the provisions of articles 125 to 128 CRRC, we can find a set of rules concerning the presumption of copyright transfer relating to film producers. More specifically, Article 127 CRRC states:

"Article 127
Effects of the authorisation
1 - Authorisation entitles the film producer to produce the negatives, positives, copies, and magnetic recordings necessary for the exhibition of the work.
2 - Authorisation for cinematographic production implies, unless specifically stipulated, authorisation for the distribution and exhibition of the film in public movie theatres, as well as for its economic exploitation by this means, without prejudice to the payment of the stipulated remuneration.
3 - Authorisation from the authors of cinematographic works is required for the sound or visual broadcasting of the film, the advertisement film and the bands or records on which parts of the film are reproduced, its communication to the public by wire or wireless means, namely by radio waves, optical fibres, cable or satellite, and its reproduction, exploitation or exhibition in the form of a video.

4 - The authorisation referred to in this article also does not cover radio broadcasts of soundtracks or phonograms in which excerpts from cinematographic works are reproduced.
5 - The broadcasting of works produced by a sound or audiovisual broadcasting organisation does not require authorisation from the author, who has the right to transmit and communicate them to the public, in whole or in part, through its own broadcasting channels."

In addition, Art. 178 (2) CRRC sets up a presumption of transfer of several performer rights to broadcasters or audiovisual producers as described above in answer to Question III 1 a) (all rights included in a transfer presumption compensated by a single equitable remuneration compulsorily managed by a CMO, except the making available right, which may be included in a mandate given to a CMO, or exercised by the performer.

Furthermore, Article 8 of the Decree-law No. 332/97, of the 27th November, which implemented EU Directive No. 2006/115/EC of the European Parliament and the Council, of the 12th December 2006, on rental right and lending right and on certain rights related to copyright in the field of intellectual property, states:

"Article 8
Presumption of assignment
The conclusion of a film production contract between performers and the producer shall give rise to a presumption, unless otherwise provided, of the assignment of the performer's rental right in favour of the producer, without prejudice to the unwaivable right to equitable remuneration for the rental, under the terms of article 5(2)."

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

As explained in the preceding answer.

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?

Already answered on **II. TRANSFERS OF OWNERSHIP [SESSION 3]**, page 5.

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

Please confront Article 43, no. 2 and 3, as described above (partial transfers) with Article 41 (Authorisations), which states, in its no. 3: "*The written authorization must contain the authorized form of dissemination, publication, and use, as well as the respective conditions of time, place, and price*."

As such, any partial transfer as well as licence must define precisely the scope of such transfer in writing.

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

Yes, under Article 44 CRRC, but this contractual clause must be part of a public deed, made by a public or private Notary, and the work(s) must be clearly identified as well as the price.

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

Yes, as explained in answer to Question 2 b) (limited to the works produced within the next 10 years).

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?)

Country of the work's original publishing (Art. 48 of the Civil Code). However, under Article 63 CRRC, Portugal shall be the competent jurisdiction for determining the legal protection of any copyrighted works, without prejudice to the International Conventions ratified or approved. Any works by foreign authors shall be protected by Portugal under the principle of reciprocity, except when an International Convention of which Portugal is a part states the contrary.

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)?

Yes, namely in the following situations:

For authors:

In the Portuguese legislation, corrective measures subsequent to right transfers or authorizations can assume different forms of legislative intervention, such as an equitable remuneration subject to collective management, presumptions of terms and conditions that are not written, the right to update a negotiated remuneration, etc. Furthermore, in the Portuguese legislation, according to Article 192, most of the rules for authors also apply to neighbouring rightsholders, namely those which deal with forms of exercising the rights.

"Article 192
Forms of exercise
The provisions on the forms of exercise of copyright apply insofar as they apply to the forms of exercise of related rights."

As examples of provisions concerning the different corrective measures:

In the next example, no. 1 of Article 41st limits the scope of the authorization in order to prevent abusive interpretations, such as to include the copyright transfer,

"Article 41
Authorisation regime
1 - The simple authorisation granted to third parties to disclose, publish, use, or exploit the work by any process does not imply the transfer of the copyright over it.
2 - The authorisation referred to in the previous paragraph can only be granted in writing, presuming that it is onerous and non-exclusive.
3- (…)"

But there are more examples in the Portuguese Copyright and Related Rights Code, and Article 44-C inserted by Decree-Law no. 47/2023 of the 19th June, which transposed Directive (EU) 2019/790 (CDSM Directive).

1 — Authors, artists, performers, or their representatives have the right to claim additional, adequate, and fair remuneration from the party with whom they have entered into a contract for the exploitation of their rights, or from their legal successors, whenever the remuneration initially agreed upon proves to be disproportionately low in relation to all subsequent relevant revenues arising from the exploitation of their works or performances, and such revenues prove to be significantly higher than those that the parties could have estimated at the time of concluding the contract.

2 — The provisions of the previous paragraph shall not apply where there are collective bargaining agreements that provide for a mechanism comparable to that established in this article.
3 — In determining and setting the amount of additional remuneration, the following factors, among others, shall be taken into account:
a) All relevant revenues and gains obtained by the counterparty;
b) The specific circumstances of each case, including the specific contribution of the author or performer to the final economic and artistic result;
c) The specificities and remuneration practices applicable to different sectors and different types of works or other protected materials.
4 — The right of compensation shall lapse if it is not exercised within two years of becoming aware of the circumstances referred to in paragraph 1.
5 — The provisions of this article shall not apply to collective licensing agreements concluded through collective management organisations for copyright and related rights."

And a few examples concerning related (neighbouring) rights, starting with an equitable remuneration subject to mandatory collective management for audiovisual artists.

"Article 178
Power to authorise or prohibit
1 - …
2 - Whenever a performer authorises the fixation of his performance for broadcasting purposes to a cinematographic or audiovisual or video producer, or to a broadcasting organisation, he shall be deemed to have transferred his broadcasting and communication rights to the public, retaining the right to receive an inalienable, equitable and single remuneration for all the authorisations referred to in paragraph 1, with the exception of the right provided for in point d) of the previous paragraph. The management of the single equitable remuneration shall be carried out by means of a collective agreement between the users and the collective management organisation representing the respective category of right holders, which shall be considered mandated to manage the rights of all the holders of that category, including those who are not registered there in."

NOTE: Point d) of paragraph 1 regards the making available right, which is thus excluded from the presumption.

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

The implementation of the EU Directive (EU) 2019/790 of the 17th April 2019, brought for the first time, the concept of appropriate and proportionate remuneration into the Portuguese legislation, via Decree-law nr 47/2003, of the 19th June.

" *Article 44th- A of Decree-law nr 47/2003, states:*

Principle of adequate and proportionate remuneration

1 - Where authors or performers grant a licence to third parties or transfer their rights in a work or other protected subject-matter for exploitation, they are entitled to receive adequate and proportionate remuneration.

2 - In applying this principle and the provisions of the following articles, account must be taken of the principle of freedom of contract, the practices and uses of the market, and the specific cultural sector concerned and the individual contribution of the original owner to the whole work or other subject-matter protected, with a view to achieving a fair balance of rights and interests.

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

This situation is also addressed by Decree-Law no. 47/2003, of the 19th June, in its article 44th–C, as transcribed above, in answer to question III 1a) and there are also a few examples concerning related rights, starting with an equitable remuneration subject to mandatory collective management for audiovisual artists (Art. 178 CRRC, as explained above). This provision doesn't apply to software, according to Art. 44th -F inserted by that Decree-Law.

c. By providing for unwaivable rights to remuneration in the form of residual rights?
n.a.

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?

Yes, the Portuguese law implementing the EU Directive no. 2019/790 of the 17th April 2019 includes the possibility of revocation by the author or performer upon granting a licence, after five years of lack of exploitation by the licensee or one

third of its initial duration. However, the Portuguese implementation of the revocation right does not distinguish between the different modes of exploitation, only applies to exploitation as a whole. This is addressed in Article 44th–E CRRC inserted by Decree-law no. 47/2003 of the 23rd June, in the following terms:

"Article 44 -E
Right of revocation
1 - Whenever an author or a performer grants a licence or transfers his/her rights over a work or performance, on an exclusive basis, they may revoke,
in whole or in part, that licence or transfer, in the event of failure to exploit the work or other protected subject matter.
2 - The right of revocation provided for in the previous paragraph may only be exercised after five years have elapsed since the contract was concluded or one third of its initial duration, whichever occurs first.
3 - In the case of contracts relating to future works or services, the period referred to in the preceding paragraph shall run from the completion of the work or the establishment of the service.
4 - Without prejudice to the provisions of Article 136, videographic and cinematographic works or works produced by a process similar to cinematography are excluded from the mechanism provided for in paragraph 1.
5 - If the author or performer wishes to take advantage of the provisions of no. 1, he must notify the counterparty of his intention, in writing and with proof of receipt, setting a deadline of no less than three months.
A period of not less than six months shall be set for the exploitation of such rights which are the subject of a licence or of a transfer.
6 - Once the time limit set in the previous paragraph has elapsed, and if there is still no exploitation, the author or artist may proceed with the revocation or, alternatively, choose to end the exclusivity of the licence.

7 – (…)"

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

Please refer to the previous answer. Either revocation of the licence or termination of exclusivity, at the option of the author or performer.

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

Yes. This matter is dealt with by Decree-law no. 47/2023 of the 19th June, in its article 44th–B. Please see below.

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

Please see below.

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

Please see below.

"*Article 44th -B*

Duty of Information

1 - Counterparties to whom exclusive licences are granted or to whom rights for the commercial exploitation of works or other protected subject-matter are transferred in any form whatsoever, as well as their legal successors, must provide authors and performers, or those who legitimately represent them, with up-to-date, relevant and exhaustive information on the exploitation of their works and performances, in particular on the method of exploitation, as well as on all revenue obtained by the counterparty as a result of the commercial exploitation of the work and on the remuneration due.

2 - The information referred to in the previous paragraph must be provided on a regular basis and considering the specificities of each sector.

3 - The obligation provided for in the previous paragraph shall be provided at least once a year and must be proportionate, effective, and ensure a high level of transparency, considering, in particular, its usefulness.

4 - Where the administrative burden of providing information becomes disproportionate to the volume of revenue from operations, the obligation may be limited to the type and level of information that can reasonably be expected under the circumstances.

5 - The right provided for in this article shall apply to authors or performers who have transferred or licensed their rights in a work or performance, or who have made a significant personal contribution, or, where their personal contribution cannot be considered significant, demonstrate the need to obtain the information required to exercise their rights under article 44th-C.

6 - If the acts of commercial exploitation of the work or performance are carried out by third parties, under a sub-licence concluded with the counterparty referred to in paragraph 1, the information provided for therein may be requested from the sub-licensees, through the other party directly licensed by the authors, artists, performers or their legitimate representatives, at their request, if and to the extent that this counterparty does not have or has not provided all the information required under the terms of the previous paragraphs.

7 - The requests for information referred to in the previous paragraph to a third-party sub-licensee may be made directly by authors and performers, if such

information is not requested from the sub-licensee by the directly licensed counterparty.

8 - For the purposes of the preceding paragraph, counterparties directly authorised by authors or performers shall provide the latter, at their request, with all relevant and necessary information on the identity and contact details of those to whom they have sublicensed the commercial exploitation.

9 - The provisions of the preceding paragraphs shall not apply to collective licensing contracts entered into by collective management entities for copyright and related rights, to which the provisions of Law no. 26/2015, of 14 April, in its current wording, which regulates collective management entities for copyright and related rights, including with regard to establishment in national territory and the free provision of services by entities previously established in another Member State of the European Union or the European Economic Area, and repeals Law no. 83/2001, of 3 August, shall apply.

10 - Whenever the recipient of the information provided under the terms of this article has access to information subject by the parties to obligations of secrecy or confidentiality, it is subject to such obligations and may only use the information obtained to the extent necessary for the exercise of its rights."

Any dispute regarding the duty of information or the additional remuneration may be submitted, under Article 44th-E CRRC, to an institutionalised arbitration centre that, until now, has not been created, so it has had little to no application.

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?)

Yes, under the terms of Article 44th-E, as described above, after five years of lack of exploitation or elapse of one third of the initial duration of the licence. This provision doesn't apply to software, according to Art. 44th -F.

Any dispute regarding the duty of information or the additional remuneration may be submitted, under Article 44th-E CRRC, to an institutionalised arbitration centre that, until now, has not been created, so it has had little to no application.

"*Article 44-D*

Alternative dispute resolution procedure

1 - Disputes relating to the duty of information provided for in article 44b or relating to the additional remuneration referred to in the previous article may be submitted by the parties to an institutionalised arbitration centre

referred to in article 8 of Decree-Law no. 47/2023, of 19 June, or to arbitration under the terms of the Voluntary Arbitration Law, approved in the annex to Law no. 63/2011, of 14 December.

2 - The disputes referred to in the previous paragraph are subject to necessary arbitration when, at the express option of the authors or artists, interpreters or performers, they are submitted to of the institutionalised arbitration centre referred to in the previous paragraph.

3 - Collective management organisations representing authors and artists, performers or performers are entitled to initiate and intervene in the procedures referred to in the previous paragraph whenever expressly mandated by the respective right holders.

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 making available right is introduced as an exclusive right:

For authors, under Article 68th, no. 2, j) of CRRC:

"The making available to the public, by wire or wireless means, of the work in such a way as to make it accessible to any person from the place and at the time chosen by them;"

For performers, under Article 178th, no.1, d) of CRRC:

"d) The making available to the public, by wire or wireless means, in such a way as to be accessible to any person from the place and at the time chosen by that person."

For producers, under Article 184th , no. 1 e)

"c) the making available to the public, by wire or wireless, so that they are accessible to any person from the place and at the time chosen by him/her."

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?

Yes, for all the right holders as long as the work or performance is fixed.

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, this matter is dealt with in Articles 41st to 44th of the CRRC. The main principles are included under Article 43rd CRRC:

"Partial transfer or encumbrance

1 - Partial transfers or encumbrances have as their mere object the forms of use designated in the act that determines them.

2 - Contracts whose object is the partial transfer or encumbrance of copyright must be set out in a written document with notarised signatures, under penalty of nullity.

3 - The title must set out the faculties which are the object of the provision and the conditions for exercising them, specifically with regard to time and place, and, if the deal is onerous, the price.

4 - If the transfer or encumbrance is transitory and no duration has been established, it shall be presumed that the maximum duration is 25 years in general and 10 years in the case of photographic works or works of applied art.

5 - However, the exclusive licence shall lapse if the work has not been used after seven years.

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?

Yes.

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?

Yes, Article 184th of the CRRC:

"Article 184

Authorisation from the producer

1 – Any direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, and any distribution to the public of copies thereof, as well as their import or export, shall require authorisation from the producer of the phonogram or video.

2 - Authorisation from the producer of the phonogram or video shall also be required for the dissemination by any means, the public performance thereof and the making available to the public, by wire or wireless means, in such a way that they are accessible to any person from the place and at the time chosen by that person.

3 - When a commercially released phonogram or video or a reproduction thereof, is used by any form of public communication, the user shall pay the producer and the performers an equitable remuneration, which shall be divided between them equally, unless otherwise agreed.

4 - Producers of phonograms or video shall have the right of supervision similar to that conferred in Article 143(1) and (2)."

3 — Remuneration

a. Are authors/performers entitled to remuneration for licensing the streaming of their works/performances?
Yes, as long as the right is not transmitted.

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.

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)?
No. The collective management is voluntary, as a rule, namely for exclusive rights.

b. If authors and/or performers retain a residual right to remuneration (ss 3 b.), is collective management prescribed for managing this residual right to remuneration? If so, what form of collective management is prescribed (e.g. mandatory or extended)?
n.a.

5 — Transparency and the management of large catalogues

a. Does your law (or, in the absence of statutory regulations, industry-wide collective agreements) guarantee that authors and performers regularly receive information on the exploitation of their works and performances from those to whom they have licensed or transferred their rights? If yes, what is the guaranteed periodicity and content of such information?

Yes, as explained above in answer to Question III 3 b). (Article 44th – B (of Decree-law nr 47/2003, of the 19th June).

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.