

140 YEARS LATER, LOOKING AHEAD

WHOSE RIGHT IS COPYRIGHT?

OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS

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BLACA's response to QUESTIONNAIRE on the basis of United Kingdom Law

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

Yes. Section 11(1) of the Copyright Designs and Patents Act 1988, as amended ('CDPA') states

'11 First ownership of copyright.

(1) The author of a work is the first owner of any copyright in it, subject to the following provisions.' [subsection (2) deals with employee works, see below]

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

Yes. In the case of authorial works (literary, dramatic, musical and artistic works) section 9 CDPA provides:

'(1) In this Part "author", in relation to a work, means the person who creates it.'

The CDPA makes a distinction between the 'creation' and 'fixation' of the work. Section 3(3) confirms that that author does not have to be the person who *fixes* the work, merely the person who *creates* it.

The CDPA also deems the maker of so-called 'entrepreneurial works' (sound recordings, film fixations, broadcasts and typographical arrangements of published editions – see below) as the 'author' of their works. See section 9(2)

b. For joint works (works on which more than one creator has collaborated), does your law define joint authorship?

Yes. The definition is found in CDPA section 10 'Works of joint authorship', which applies to literary, dramatic, musical and artistic works

‘(1) In this Part a "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.’

The Court of Appeal of England & Wales considered this definition in *Kogan v Martin* [2019] EWCA Civ 1645 at [30]-[53]. Joint authorship involves collaboration in a common design to produce the work, here a dramatic work - the screenplay for the film ‘Florence Foster Jenkins’. It was considered wrong to focus solely on the person who did the writing - contributions to choice of characters and incidents, storyline and plot were important in creation of the work.

Distinctions were drawn between

- a. jointly-authored works and derivative works such as adaptations, and
- b. the making of a work and its fixation in material form.

Joint contributions do not have to be equal contributions; ultimately on a retrial the judge held Kogan’s contribution to amount to 20% of the final screenplay.

Continuing with CDPA section 10, further subsections elaborate on the definition in the case of other specific types of work:-

‘(1A) A film shall be treated as a work of joint authorship unless the producer and the principal director are the same person.

(2) A broadcast shall be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast (see section 6(3)).

For joint works in general, Section 10(3) shows that the consent of all authors is required for exploitation of the work:-

‘(3) References in this Part to the author of a work shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.’

This is made explicit by section 173 (2): -

‘Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.’

This requirement seemingly extends to the authors themselves, so that a joint author would require the permission of all joint authors to use the work — even for their own personal use.

In addition, the CDPA makes special arrangements for the combination of lyrics and music written to be used together, such as in a song. Section 9(1) requires joint authors to collaborate in the creation of ‘a work’ (singular). Section 3(1) confirms that lyrics and music constitute *two*

separate works: a literary work in the lyrics and a separate musical work in the music. The authors of respective lyrics and music cannot be considered joint authors of a *single* work. In this specific situation, section 10A provides:

‘10A Works of co-authorship

(1) In this Part a "work of co-authorship" means a work produced by the collaboration of the author of a musical work and the author of a literary work where the two works are created in order to be used together.’

What is the scope of each co-author’s ownership? (may joint authors exploit separately, or only under common accord)?

Section 10A was initially added to the CDPA in line with the UK’s former obligations under Directive 2011/77/EU to harmonise the term of protection of a musical composition with words. Directive 2011/77/EU required copyright to expire 70 years after the death of the last of the author of the lyrics and the composer of the musical composition to survive, whether or not those persons are designated as co-authors, provided that both contributions were specifically created for the respective musical composition with words.

For works of ‘co-authorship’ (words plus music), section 10A provides

‘(2) References in this Part to a work or the author of a work shall, except as otherwise provided, be construed in relation to a work of co-authorship as references to each of the separate musical and literary works comprised in the work of co-authorship and to each of the authors of such works.’

2 — Employers

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

According to CDPA, s11(2)

‘Where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.’

Note that there are certain special copyrights under UK law such as Parliamentary copyright or the copyright of international organisations, which do not follow the patterns outlined above. CDPA section 11(3) states

‘This section does not apply to Crown copyright or Parliamentary copyright (see sections 163 and 165) or to copyright which subsists by virtue of section 168 (copyright of certain international organisations).’

Previous UK Copyright Acts of 1956 and 1911 made special provision for employed journalists' copy. Subject to agreement to the contrary, the newspaper, magazine or other periodical would enjoy rights relating to press publication, while the author would retain rights over other forms of exploitation. The author probably retained rights to control use of the works in press clipping and similar services. Many works made under the 1956 arrangements may still be in copyright, as explained under Section III below. For these it is necessary to consult the 1956 Act, section 4 (works made between 1 June 1957 and 1 August 1989). The effect of a similar provision in the Copyright Act 1911 (works made between 1 July 1912 and 31 May 1957) does not seem to have been carried forward. The editors of Copinger and Skone-James on Copyright (19th edition, Sweet & Maxwell, 2024 at para 4-30) express the view that the authors' rights to control non-periodical use will no longer be available, but rather the publishers will enjoy full copyright. Alternatively, a presumption of continuity might be applied so that the author's rights were maintained.

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?

As a general rule, to acquire UK copyright under CDPA, a commissioner must take an assignment of copyright. Assignments must be in writing, signed by the assignor: section 90(3)

'An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.'

If a contract of commission is silent as to ownership, there may be an implied agreement to assign copyright [see below, II.C.1.]

If (as usual) agreed in advance of creation of the work, such express or implied term operates as an agreement to assign future copyright from the author to its prospective owner. This then takes effect at a later date when the work is created and copyright comes into being. CDPA section 91 clarifies:

'(1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then if, on the copyright coming into existence, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this subsection.'

The commissioner will then receive such total or partial share of the copyright as agreed.

Under the previous Copyright Acts, paying commissioners of photographs, portraits (drawings or paintings) and engravings obtained copyright in them. This was seen as particularly important for family photographs and portraits as well as for the press, who might for example commission a sketch to be made of the accused in a notorious criminal case to accompany a published report. For such works made before 1 August 1989, these should be borne in mind.

For works governed by CDPA 1988, there are no such provisions on title, but Section 85 contains a privacy right for commissioners, subject to certain permitted acts in s85(2).

'85 Right to privacy of certain photographs and films

(1) A person who for private and domestic purposes commissions the taking of a photograph or the making of a film has, where copyright subsists in the resulting work, the right not to have--

- (a) copies of the work issued to the public,
- (b) the work exhibited or shown in public, or
- (c) the work communicated to the public;

There were also specific provisions in the 1956 Act relating to commissioned sound recordings.

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

Section 9 CDPA vests ownership of copyright in certain works by a mechanism of deemed authorship, thus:

'9 Authorship of work

(1) In this Part "author", in relation to a work, means the person who creates it.'

(2) That person shall be taken to be –

- (aa) in the case of a sound recording, the producer;
- (ab) in the case of a film, the producer and the principal director;
- (b) in the case of a broadcast, the person making the broadcast (see section 6(3)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;
- [(c) repealed]
- (d) in the case of the typographical arrangement of a published edition, the publisher.'

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

These provisions refer to copyright in the film, broadcast or typographical arrangement. However, underlying works such as a screenplay (dramatic work) or film score (musical work) are seen as separate works, whose author(s) who may transfer rights explicitly or by implication.

Categories of 'collective work' are defined elsewhere in CDPA, but are not relevant for initial ownership. Rather, they relate to collective management, and to reversionary interests (see section III below).

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

English law of property makes a distinction between two kinds of ownership. Strict legal ownership follows the statutory rules outlined above. However, 'equitable' or 'beneficial' ownership is also recognised – who in all fairness should enjoy the rights? The legal owner will then be seen as holding property on trust for the equitable owner and can be called upon to make a transfer at a later date.

Section 171 preserves the rules of common law and equity/trusts in the copyright sphere.

Equitable title to copyright may arise when an author is paid to create a work but for some reason the agreement between commissioner and author does not trigger section 91(3). The contract may not have been signed, or may be oral, not written. In *Peer International Corp v Termidor Music Publishers* [2002] EWHC 2675 (Ch), it was held that a contract which under subsequent Cuban legislation had required presentation and approval in Cuba for its validity (not done) nonetheless vested equitable title in England to UK copyrights.

The property and contract laws of Scotland are mixed civil- and common-law and differ somewhat from the laws of England, Wales and Northern Ireland. Although not decided in this area, it seems likely that similar results would obtain in Scotland.

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?)

[b. For presumptions of transfers, see II (transfers of ownership, below)]

Section 176 CDPA defines a 'computer-generated' work as one which 'is generated by computer in circumstances such that there is no human author of the work'.

Section 9(3) states

'In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.'

The legislative origins of section 9(3) have been the subject of prolonged academic, historical analysis [James Parish, ‘Time to Repeal Section 9(3) Copyright, Designs and Patents Act 1988: New insights from the lobbying and drafting history behind the infamous UK computer-generated works regime’ (2025) 2 IPQ 94]

Section 9(3) has received scant judicial attention; judges finding human authorship in the few cases where it has been cited. It was pleaded in *THJ Systems Ltd v Sheridan* [2023] EWCA Civ 1354. In that case, however, authorship issues had been agreed prior to hearing of appeal. The Court of Appeal for England & Wales affirmed that UK law applies the EU ‘author’s own intellectual creation’ test for originality. It is difficult to envisage how this test would apply to works created without a human author.

In June 2022, the Government announced its intention to keep section 9(3) as initially drafted. See <https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents/outcome/artificial-intelligence-and-intellectual-property-copyright-and-patents-government-response-to-consultation#copyright-in-computer-generated-works> at paras 19-21.

In its December 2024 consultation ‘Copyright and AI’ (CP 1205) the UK government referred to section 9(3) as possibly applying to works created using artificial intelligence, but indicated that it might be repealed unless a case was made for retention.

A fiercely debated Bill, which raised many objections to the use of copyright works in AI became the Data (Use and Access) Act 2025. Section 136 of this Act requires the government to report to Parliament on copyright issues in AI.

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 *Peer v Termidor* [2002] EWHC 2675 (Ch), it was held that agreements with Cuban composers governed by the laws of New Jersey were effective to transfer equitable interests in UK copyrights. Furthermore, such interests were not taken away by post-revolutionary Cuban legislation. The latter ruling was appealed but the appeal dismissed, applying a *lex situs* rule to the copyrights and rejecting arguments based upon comity and public policy: [2003] EWCA Civ. 1156.

As for initial ownership generally, there has been debate. [Paul Torremans ‘Authorship, Ownership of Right and Works Created by Employees: Which Law Applies?’ [2005] EIPR 220; Phillip Johnson ‘Which law applies? A reply to Professor Torremans’ [2005] JIPL&P 71; Paul Torremans ‘Which law applies? A reply from Professor Torremans to Phillip Johnson’s reply to his earlier work’ [2005] JIPL&P 76]

Courts considering UK copyright will generally refer to the longstanding practitioner work Dicey, Morris & Collins on the Conflict of Laws (16th Ed, Sweet & Maxwell). At para 26-049 is stated [citations omitted]

‘...The majority view is that initial ownership is tied to the law governing the existence of the right, as is the transferability of the right; but some consider that, at least in the case of copyright and related rights, the *lex originis* (the law of the country of origin) should govern initial ownership.’

The former view seems consistent with *Peer v Termidor* and is likely to be followed.

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?

The CDPA recognises two moral rights: the right of attribution and the right to object to derogatory treatment. Moral rights are granted to the author or director (sections 77(1) and 80(1)), and are not assignable (section 94).

However, the attribution right cannot be infringed unless the author or director has asserted their rights (section 77(1)). The would-be infringer must be ‘bound’ by the attribution right through the author’s and director’s assertion, otherwise they cannot infringe (section 78(1)). The CDPA provides four methods by which the would-be infringer can become ‘bound’ by the attribution right:

1 - The author or director asserts their attribution right in the written instrument that assigns copyright to its new owner. This method of assertion binds the assignee plus anyone claiming through assignee, whether or not they have notice of the assertion (sections 78(2)(a) and 78(4)(a)).

2 - The author or director asserts their attribution right in another written instrument (that is not an assignment), and the written instrument is signed by the author or director. This method of assertion binds anyone who is given notice of the assertion (sections 78(2)(b) and 78(4)(b)).

3 – In the case of artistic works, the author can assert their attribution right when they part with possession of the original artistic work by identifying themselves as the author of the work on the artwork itself or

on the frame, mount or any other thing attached to the artwork. This method of assertion binds anyone who ‘into whose hands’ the artwork comes, whether or not the identification is still present or visible. The assertion only applies to the public exhibition of the artwork (sections 78(3)(a) and 78(4)(c)).

4 - In the case of artistic works, the author can assert their attribution right in a contractual licence authorising the making of copies of the artwork signed by or on behalf of the person granting the licence. The assertion only applies to the public exhibition of the subsequent copies of the artwork, and binds the licensee, plus anyone ‘into whose hands’ one of the copies comes whether or not they have notice of the assertion.

b. May the author contractually waive moral rights?

The UK has a strong-held principle of freedom of contract. Persons ‘of full age and competent understanding shall have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily shall be held sacred and shall be enforced by courts’: *Printing and Numerical Registering v Sampson* (1874-75) LR 19 Eq 462 (Ch D), 465 per Jessel MR. Parties can even agree to particularly onerous or unusual terms provided the terms are fairly and reasonably brought to the attention of all parties. See *Interfoto Picture Library v Stiletto Visual Programmes* [1988] 2 WLR 615, [1989] QB 433 (CA (Civ)). The Courts of England and Wales even allow the public to contract out of the benefits of legislation per the legal maxim: “Anyone may, at his pleasure, renounce the benefit of a stipulation or other right introduced entirely in his own favour” (see Herbert Broom, *A Selection of Legal Maxims: Classified and Illustrated* (10th edn, London: Sweet & Maxwell Limited 1939) 477).

It follows that an author or director can waive their moral rights under general contract law. The CDPA provides an express confirmation that authors or directors can waive their moral rights, and specifies the formal requirements needed to give effect to the waiver. An author or director can waive any of their moral rights by signing a written instrument. The written waiver may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works. The waiver may also be conditional or unconditional and may be expressed to be subject to revocation (section 87(2)–(3)).

If the waiver is made in the favour of a new owner of the work, the CDPA presumes the waiver extends to all the future owner's licensees and successors in title unless a contrary intention is expressed.

2 — Economic rights

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

Section 90(1) CDPA allows copyright ownership to be transferred as personal or moveable property by assignment.

The CDPA does not provide express permission or clarification that authors can waive their economic rights.

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

The CDPA generally does not restrict the copyright owner's ability to transfer all present and future copyright.

B. Transfers by operation of law

1 — Presumptions of transfer:

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

Section 93A presumes that authors will have transferred to the film producer any rental rights necessary in relation to the film by the inclusion of a copy of their work within the film. This applies to both existing and future rights (section 93A(2)), but no such presumption exists for the author of the screenplay, the dialogue or music specifically created for and used in the film (section 93A(3)).

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

Yes. The section 93A presumption applies unless an agreement provides otherwise.

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

Section 93A only applies to the rental right.

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

The author must have concluded 'an agreement' with the film producer (section 93A(1)). The Act does not specify whether the agreement must be in writing, meaning the presumption likely extends to oral agreements made between the author and producer as well.

The section 93A presumption is an implicit exception to the section 90(3) requirement that an assignment of copyright is not effective unless it is in writing, signed by or on behalf of the assignor. Section 93A(4) provides an express exception to the requirements of section 91(1) which requires the author to sign a written agreement to affect the prospective assignment of future copyrights.

In exchange, authors are guaranteed the same equitable remuneration on transfer of the rental right as in the case that the rental right had been expressly transferred by assignment (section 93A(6)). The author cannot assign the equitable remuneration except to a collecting society for the purpose of enabling it to enforce the right on their behalf. However, the equitable remuneration right can be transferred by testamentary disposition or by operation of law as personal or moveable property; and it may be assigned or further transmitted by any person into whose hands it passes (section 93B(2)).

2 — Other transfers by operation of law?

Section 90(1) permits the transfer of copyright by testamentary disposition or by operation of law.

Section 93 CDPA states that where a testator bequeaths a material thing recording or embodying a literary, dramatic, musical or artistic work which was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to it, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death. The Copyright Act 1956 s.38 and Sch.7 para.29(1) provided similar provisions. These rules apply to deaths occurring on or after 1 June 1957. Section 93 CDPA extends similar rules to sound recordings or films which was not published before the death of the testator. These rules apply to deaths occurring on or after 1 August 1989.

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?

Section 90(3) provides that an assignment of copyright is not effective unless it is in writing, signed by or on behalf of the assignor. The CDPA does not appear to require the assignee to accept the assignment. Nor does the CDPA appear to require the assignee to provide any consideration in exchange for the assignment of copyright. (see Nicholas Caddick, Gwilym Harbottle and Uma Suthersanen (eds), *Copinger and Skone James on Copyright* (19th edn, Sweet & Maxwell 2024) [4–129(e)]).

However, an assignee is bound by all previous licences issued by the previous copyright owner, unless the assignee purchases the copyright in good faith for value without notice (actual or constructive) of the licences (section 90(4)).

There are no requirements to register or record the transfer. However, a court can imply an agreement to assign the work from a commissioned author to the commissioning party if obviously necessary to give business efficacy to the transaction. Lightman J spelt out in *Robin Ray v Classic FM* [1998] FSR 622 (Ch D) at 641–644 that a commissioned author is, by default, entitled to retain the copyright over their work in lieu of an express or implied term to the contrary. The act of commissioning an author to create a work is, by itself, insufficient to entitle the commissioning party to the copyright. The court must also take a ‘minimalist approach’ when implying an agreement to assign. Thus, if business efficacy and necessary circumstances only require a licence, the court will imply a licence rather than an assignment. And if the court implies a licence, the scope of the licence must be the minimum necessary to allow the commission party to achieve what the parties intend when commissioning the work. Possible situations where the court may be willing to go further and imply an agreement to assign include: ‘(a) where the purpose in commissioning the work is for the client to multiply and sell copies on the market for which the work was created free from the sale of copies in competition with the client by the contractor or third parties; (b) where the contractor creates a work which is derivative from a pre-existing work of the client, e.g. when a draughtsman is engaged to turn designs of an article in sketch form by the client into formal manufacturing drawings, and the draughtsman could not use the drawings himself without infringing the underlying rights of the client: (c) where the contractor is engaged as part of a team with employees of the client to produce a composite or joint work and he is unable, or cannot have been intended to be able, to exploit for his own benefit the joint work or indeed any distinct contribution of his own created in the course of his engagement’.

The Court of Appeal approved Lightman J's factors in *Griggs Group Ltd v Evans* [2005] EWCA (Civ) 11, [2005] FSR 31. The framework follows the general rules of contract law. In *Fisher v Brooker* [2009] UKHL 41 at [54], it was held that there had not been an assignment of Fisher's share of copyright in the song 'A Whiter Shade of Pale'.

Academic criticise the Court's willingness to imply agreements to assign copyright. Bently, Sherman, Gangjee and Johnson state: 'These decisions amount to judicial variations of a clear legislative scheme. Clearly, the judges are looking at transactions after the event and are motivated by gut feelings of justice to prevent opportunistic behaviour by creators. However, the impact of the decisions is to undermine a clear scheme that is designed both to achieve certainty in transactions and to protect authors. It does so by requiring parties to allocate ownership through written assignments and, in so doing, requires those acquiring rights to specify what they want, thus giving authors an opportunity to reflect upon whether they wish to transfer all of those rights. Under that scheme, the penalty for those commissioners who fail to organize their legal rights properly is that they risk having to bargain for them later. The courts, by repeatedly responding to their sense that rights should follow money, remove this 'penalty' and, with it, undermine the goals that the statutory scheme aims to achieve. The better view is that these cases should be confined to their specific facts and implied assignments found only in exceptional cases' (*Intellectual Property Law* (6th edn, Oxford University Press 2022) pp 151–152).

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

Section 90(2) permits the partial transmission of copyright. A copyright owner can transfer ownership of all six exclusive rights: reproduction, adaptation, distribution, public performance, communication to the public, and rental and lending. Alternatively, the owner can transfer a subset of the rights or subdivide the rights and assign only specific aspects of the exclusive rights. They can transfer the rights for the whole or a part of the duration of copyright.

Some commentators also suggest that a copyright owner cannot subdivide rights among the different national states of the UK. (Nicholas Caddick, Gwilym Harbottle and Uma Suthersanen (eds), *Copinger and Skone James on Copyright* (19th edn, Sweet & Maxwell 2024) [4–115]–[4–117]). The UK means Great Britain (England, Scotland and Wales) and Northern Ireland (see Interpretation Act 1978, schedule 1)

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

Yes.

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

Yes. Section 91(1) provides that a prospective author can purport to assign future copyright (wholly or partially) to another person. A prospective employer who is likely to obtain the first legal title to a work by virtue of the author making the work within the course of employment (section 11(2)) can also purport to assign future copyright (wholly or partially) to another person. The agreement to transfer future copyright must be signed by or on behalf of the prospective author, or the prospective employer in the case of future works made in the course of employment. This provision applies to all agreements made on or after 1st June 1957 (Schedule 1, para 26).

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?)

According to court practice, the relevant law is the *lex loci protectionis*, i.e. the law of the country where the protection is claimed. This rule goes back to *Campbell Connolly & Co Ltd v Noble* [1963] 1 WLR 252 at 255 (Wilberforce J) and has been subsequently reiterated, for example by the then Mr Justice Arnold in *Gloucester Place v Le Bon* [2016] EWHC 3091 (Ch). Note in particular paras 16 and 17:

'16. The rule at common law is that the question of whether, and to what extent, title to copyright is assignable depends on the law under which that copyright was created (the *lex loci protectionis*, that is to say, the law of the country "where protection is claimed" in the words of Article 5(2) of the Berne Convention for the protection of literary and artistic works, which is properly interpreted as being the law of the country in respect of which protection is claimed): see *Campbell Connolly & Co Ltd v Noble* [1963] 1 WLR 252 at 255 (Wilberforce J). There is no reason to think that the position is any different under the Rome Convention: see Dicey, Morris & Collins, *The Conflict of Laws* (15th ed) at 24-069.

17. If and to the extent that title is assignable under the *lex loci protectionis*, the question of whether, and to what extent, title has in fact been assigned by an agreement governed by English law depends on the effect of the agreement applying English law, and in particular English principles of contractual interpretation: see *Peer International Corp v Termidor Music Publishers Ltd* [2002] EWHC 2675 (Ch) at [24] (Neuberger J) (affd [2003] EWCA 1156, [2004] Ch 212).’

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)?

No. UK law recognises the principle of contractual freedom and does not require specific stipulations regarding payment, such as proportional remuneration.

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

No, see above.

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

There are no specific rules in the CDPA. However, more general rules like the doctrine of restraint of trade or of undue influence may come into play. Relevant cases include

- on restraint of trade:

Schroeder Music Publishing Co Ltd v Macaulay [1974] 1 WLR 1308

ZTT v Holly Johnson [1993] EMLR 61

Panayiotou and others v Sony Music Entertainment (UK) Ltd [1994] EMLR 229

- On undue influence:

Elton John v James [1991] FSR 397

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

Unwaivable rights to remuneration in the form of residual rights apply only with regard to the transfer of the rental right concerning a sound recording or a film by an author or a performer to the producer of the sound recording or film (cf. sec. 93B for authors and sec. 191G for performers).¹

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?

There are no specific provisions in the CDPA. The general provisions of the law of contract apply. Failure to perform obligations under a contract may constitute a breach of contract.

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

Where the failure to exploit the work constitutes a breach of contract, the remedies under general contract law apply. Such remedies include an action for specific performance, damages, injunctions, an action on a quantum meruit or rescission.

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)

No, but see the information on the voluntary code of good practice of transparency in music streaming below at IV.5.

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

N/A, see above.

4 — Does your law give authors or performers the right unilaterally (without judicial intervention) to terminate their grants?

- a. Under what circumstances?

¹ An up to date version of the UK Copyright, Designs and Patents Act can be accessed here: <https://www.legislation.gov.uk/ukpga/1988/48/contents>.

i. After the lapse of a particular number of years?

The Copyright Act, 1911² made provision for a reversion of rights which came into play 25 years after the author's death. Even though adopted over 100 years ago and omitted in subsequent UK copyright legislation, reversion can still be relevant today in specific case scenarios involving older works where a contract was concluded before 1 June 1957.

Reversion under the Copyright Act, 1911

Pursuant to Sec. 5(2) of the 1911 Act, provided that the author was also the first owner of copyright, no assignment of the copyright and no grant of any interest therein other than by will made by the author after the passing of the Act, i.e. 16 December 1911, could vest in the assignee or grantee beyond the expiration of 25 years from the death of the author. On the author's death, the reversionary interest devolved on the legal representatives as part of the estate. During the final 25 years following the reversion, the reproduction of the work for sale was allowed on the basis of a compulsory licence at the rate of 10% on the price at which the work was published (Sec. 3 Copyright Act, 1911). The rationale for the introduction of reversion in the 1911 Act is usually seen in the extension of the term of protection to 50 years p.m.a..³ Pointing to the link between Sec. 3 and Sec. 5(2) of the Act, the Gregory Report suggested that the reason behind reversion was to enable the author's legal representatives to benefit from the 10% royalty.⁴

Reversion applies expressly to literary, dramatic, musical and artistic works. It has been suggested that the notion of "work" should also cover films and recorded sound.⁵ While this may be plausible with regard to films insofar as cinematograph productions could qualify as a dramatic work in accordance with the definition of "dramatic work" and the notion of "cinematograph" in Sec. 35(1) of the 1911 Act, recorded sound was protected separately under Sec. 19(1) of the Act "as records, perforated rolls and other contrivances by which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works". While recorded sound was associated with musical works, its term of protection was different in that the 50-year period did not start with the death of the author of the contrivance, but with the making of the original plate. Thus, the fact that the term was not linked to the death of

² 1 & 2 Geo 5. Ch. 46, adopted 16th December 1911, in force from 1st July 1912.

³ Cf. for example Elena Cooper, 'Reverting to reversion rights? Reflections on the Copyright Act 1911' [2021] 43(5) EIPR 292-297.

⁴ Report of the Copyright Committee, ('Gregory Report', 1952), Official Papers England 1951-1952, Vol. IX, Cmnd 8662, para. 23.

⁵ Laddie, Prescott and Vitoria, *The Modern Law of Copyright* (2018), para. 12.44.

the author who was not necessarily a natural person but could have also been a 'body corporate', makes records and the like an unlikely candidate for reversion.

As set forth in Sec. 5(2) of the 1911 Act, reversion comes into play where authors have either assigned their copyright or granted any interest therein. What constitutes a 'grant of any interest' is unclear. Presumably it refers to the grant of an exclusive licence.⁶

Reversion requires that the author is the first owner of the copyright. Consequently, it does not apply to works made in employment nor to commissioned engravings, photographs and portraits.⁷ While Sec. 5(2) of the Act excludes the application of reversion to collective works, reversion applies in the case of joint works.⁸

The fate of reversion under subsequent Copyright Acts

Reversion was omitted in the Copyright Act, 1956⁹ on recommendation by the Gregory Committee, particularly in view of the incompatibility of the compulsory licence in Sec. 3 of the 1911 Act with Article 7 of the Brussels text of the Berne Convention.¹⁰ Since Sec. 3 and Sec. 5(2) of the 1911 Act were linked, reversion also had to vanish from the statute book. Nevertheless, reversion is not just a feature of the past but can still be relevant today as a result of transitional provisions in the Copyright Act, 1956 (7th Schedule, para. 28(3)) and the Copyright, Designs and Patents Act, 1988¹¹ (Schedule 1, para. 27). Reversion on the basis of these provisions only applies to licences and grants made between the passing of the 1911 Act, i.e. 16 December 1911, and the entry into force of the 1956 Act (i.e. 1 June 1957). Consequently, any assignment or grant of rights after 1 June 1957 will not be subject to reversion, even if the respective work was created before 1 June 1957.¹² Following a recommendation by the Whitford Committee, authors may now assign the reversionary interest during their lifetime (Schedule 1, para. 27(2) CDPA). This was not possible for living authors under the 1911 Act and doubtful, albeit presumably admitted, under the 1956 Act.¹³

⁶ Copinger and Skone James on Copyright, 18th ed. (2021), para. 4-139.

⁷ Copinger, op. cit., para. 4-137.

⁸ Copinger, op. cit., para. 4-142.

⁹ 4 & 5 ELIZ. 2 Ch. 74, adopted 5th November 1956, in force 1 June 1957.

¹⁰ Report of the Copyright Committee, (1952), Official Papers England 1951-1952, Vol. IX, Cmnd 8662, paras 15 and 23.

¹¹ Copyright, Designs and Patents Act 1988 Ch. 48, adopted 15th November 1988, in force 1st August 1989, as subsequently amended.

¹² Copinger, op. cit., para. 4-140.

¹³ Copyright and designs law: report of the Committee to Consider the Law on Copyright and Designs, chaired by the Honourable Mr Justice Whitford (1977), Official Papers England 1976-1977 Cmd. 6732, paras 622 and 624.

In conclusion, although reversion was originally a feature of the 1911 Copyright Act, it can still be relevant today in the case of older works. For example, with regard to the work of a young author who assigned the copyright in 1950 and died 40 years later, reversion would have occurred in 2015. An assignment of the copyright in the same example ten years later in 1960 would however not have led to a reversion of rights. Since reversion can be classified as an aspect of transferability of copyright which follows the *lex loci protectionis*, i.e the law of the country where protection is claimed, it has even the potential to unravel international transfers of rights with regard to rights in the UK, even where the contract is not governed by English law.¹⁴ Thus, reversion represents a trap which is easily overlooked and which must be taken seriously even in an international context.

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

The Copyright Designs and Patents Act, 1988 (CDPA) enables performers to terminate unilaterally a contract with a producer of a sound recording in one specific case: Sec. 191HA CDPA was introduced by The Copyright and Duration of Rights in Performances Regulations 2013 (S.I. 2013/1782) which served the implementation of Directive 2011/77/EU of 27 September 2011 on the term of protection of copyright and certain related rights. The purpose of the amendment was, inter alia, to extend the term of protection for certain sound recordings from 50 to 70 years. According to Sec. 191HA CDPA, a performer may serve notice on the producer to terminate the agreement with which exclusive rights were transferred to the producer where said producer does not issue sufficient copies of the recording or does not make it available on the internet at the end of the initial 50-year period. If the producer does not exploit the recording within 12 months from the notice, the agreement terminates and the producer's copyright in the sound recording expires, while the performer's right continues to exist for the whole duration of the extended term of protection.

Apart from Sec. 191HA, the Copyright, Designs and Patents Act does not contain any other specific provision which would allow authors and/or performers to terminate a contract unilaterally where the other party does not fulfil its obligations. In such a case, the general principles of contract law apply. In particular, there are no provisions in place in UK

¹⁴ See the in-depth analysis by Paul Torremans and Carmen Otero García Castellón, 'Reversionary copyright: A Ghost of the Past or a Current Trap to Assignments of Copyright?' [2012] IPQ 77, 92-93.

law which would equal the right of revocation provided for in Article 22 of Directive (EU) 2019/790 on Copyright in the Digital Single Market which was not transposed in the UK following the country's withdrawal from the European Union.

However, contract adjustment mechanisms, including a revocation right, have repeatedly been called for by various groups of authors and performers in the UK. In October 2020, an inquiry was launched into the economics of music streaming by the Digital, Culture, Media and Sport (DCMS) Select Committee of the House of Commons.¹⁵ The DCMS Select Committee conducted an in-depth review and collected written and oral evidence from relevant stakeholders. In its report released in July 2021, the Select Committee recommended inter alia to introduce into the CDPA a right to "recapture" works together with a right to contract adjustment where an artist's royalties are disproportionately low compared to the success of their music.¹⁶ Similar rights found their way into a Private Members' Bill tabled back in 2021 by the then Kevin Brennan MP and now Lord Brennan of Canton.¹⁷ The Bill proposed, inter alia, the introduction of a unilateral revocation right in a new Sec. 191P for the benefit of performers 20 years after the conclusion of a transfer or an exclusive licence of their rights in their performances fixed on a sound recording. The Bill did not pass the parliamentary hurdles but the former Government announced to study the issue further. Subsequently, a report entitled "Rights reversion and contract adjustment" was published on 6 February 2023 which, inter alia, examines in detail the pros and cons of a revocation right on the basis of collected evidence.¹⁸ A specific Creator Remuneration Working Group was set up by the former Government in 2024 to further investigate fair and equitable contractual conditions in the field of music streaming together with the affected parties.¹⁹ Further analysis on the potential economic impact of equitable remuneration on performers and the UK music market was published in February 2024, focussing however on remuneration rather than termination or revocation of rights.²⁰ In its Creative Industry Sector Plan released on 23 June 2025 as part of the UK's Modern Industrial Strategy, the current UK government reiterated the commitment to chaperone an industry-led agreement of creator remuneration for music streaming in

¹⁵ For further details, see here: <https://committees.parliament.uk/work/646/economics-of-music-streaming>.

¹⁶ House of Commons, DCMS Select Committee, Economics of music streaming, 2nd Report of Session 2021-22, available at: <https://committees.parliament.uk/publications/6739/documents/72525/default/Report>, para. 123.

¹⁷ [Copyright \(Rights and Remuneration of Musicians, Etc.\) Bill](#)

¹⁸ [Rights reversion and contract adjustment - GOV.UK](#), see in particular Chapter 2.

¹⁹ [Creator Remuneration Working Group: Terms of Reference](#).

²⁰ [The potential economic impact of ER on performers and the music market in the UK - GOV.UK](#)

the course of 2025.²¹ At the end of July 2025, a set of principles concerning, inter alia, the renegotiation of contracts with legacy artists was announced by UK record labels which was welcomed by the UK government.²² These label-led principles which have been criticised by other music industry stakeholders as insufficient to fix streaming, do however not address the issue of reversion.

It should be noted that although the issue of fair and equitable contracts, including a right to revoke assigned or licensed rights, affects more generally authors and the creative sector as a whole, the above-mentioned initiatives focus on the music industry with a particular emphasis on the streaming market. This may be explained by the fact that the initiative was launched in response to the difficult situation of the music sector during the pandemic when streaming developed into a vital means of music distribution.

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

Presumably, the moral right of “repentance” does not refer to the absolution of the author or performer from their artistic or more worldly sins, but to a kind of “droit de retrait” as established under French author’s right law.²³ The UK Copyright, Designs and Patents Act 1988 does not provide for a moral right which would allow authors or performers to withdraw a work from circulation.

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?

²¹ [Creative Industries Sector Plan - GOV.UK](#)

²² [New label-led measures to boost income for UK music creators - GOV.UK.](#)

²³ Art. L. 121-4 Code de la Propriété Intellectuelle.

According to section 20 of the CDPA 1988 ‘(2)References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include—

(a)the broadcasting of the work;

(b)the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them’.

The approach to streaming is therefore clearly based on the right of communication to the public in article 8 WCT 1996. That approach covers broadcasts, sound recordings and films, as well as literary, dramatic and artistic works. The Act only uses the category of copyright and does not provide for a separate related right for phonograms. Consequently, section 20 also covers the implementation of article 14 WPPT 1996.

Performers’ rights are however different. Section 182CA CDPA grants performers an exclusive making available right which implements Article 10 WPPT. The provision covers the making available to the public of a recording of a performance by electronic transmission in such a way that members of the public may access the recording from a place and at a time individually chosen by them. Thus, section 182CA CDPA reflects the elements of Article 10 WPPT and covers the application of the right to interactive streaming services only. For non-interactive streaming services, the right to equitable remuneration for communication to the public under Article 182D (1)(b) CDPA may be relevant. This provision reflects Article 15 WPPT and Article 12 Rome Convention. Consequently, as in some continental-European systems, a distinction must be made according to the nature of the streaming service. In practice, this can be problematic in borderline cases where a service has limited interactivity. This scenario requires an analysis of the technicalities and the economic impact of the service in question. This problem does not arise under section 20 CDPA for copyright since the exclusive right is broad and covers both the making available to the public and other forms of transmission. As the right of producers of sound recordings is covered by section 20 CDPA, their protection is hence stronger than that of performers with the consequence that no distinction on the basis of the nature of the streaming service is necessary.

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 authors, see above. For performers, the exclusive making available right under sec. 182CA CDPA applies both to performances fixed in phonograms and audiovisual

fixations, while the remuneration right in Sec. 182D (1)(b) CDPA applies only to performances fixed in sound recordings.

2 – Transfer of rights

- a. Are there any regulations in your country's law that limit the scope of a transfer or license to the forms of use already known at the time of the transfer or license?

No, all future rights and uses are transferable and can be licensed.

- 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?

N/A

- 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?

There are no presumptions of transfer of the author's or performer's making available right to a producer of a phonogram or audiovisual fixation in the CDPA. The CDPA only provides for a presumption of transfer of the rental right where a film production contract is concluded between an author and/or a performer on the one hand and a film producer on the other (cf. sec. 93A for authors and sec. 191F CDPA for performers).

As far as the ownership of rights in general is concerned, the following applies:

Section 11 of the CDPA 1988 stipulates that:

'11 First ownership of copyright.

(1)The author of a work is the first owner of any copyright in it, subject to the following provisions.

(2)Where a literary, dramatic, musical or artistic work [F1, or a film,] is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.'

This provision needs to be read against the backdrop of section 9 on authorship:
'9 Authorship of work.

(1)In this Part "author", in relation to a work, means the person who creates it.

(2) That person shall be taken to be—

F1 [F1(aa)in the case of a sound recording, the producer;

F1(ab)in the case of a film, the producer and the principal director;]

(b) in the case of a broadcast, the person making the broadcast (see section 6(3)) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast;...'

3 — Remuneration

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

Authors can claim a remuneration on the basis of the exclusive right of communication to the public provided for in sec. 20 CDPA.

In a similar vein, performers may claim a remuneration when licensing their exclusive making available right arising out of section 182CA. In case of a non-interactive streaming service, the equitable right to remuneration for communication to the public in sec. 182D (1)(b) CDPA may be relevant.

- 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, but the licence can of course be partial. On that basis a residual right can be created contractually. In the CDPA there is merely section 93B for authors and section 191G for performers that creates a right to equitable remuneration where the rental right has been assigned concerning a sound recording or a film to the producer of the sound recording or film.

4 — Collective management

- a. In your country's law, is collective management prescribed or available for managing the right referred to in section 1? If so, what form of collective management is prescribed (e.g. mandatory or extended)?

Collective management is available and is used widely, but there is no mandatory or extended collective licensing.

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, but section 93B for the rental right specifies that the right can be managed collectively.

5 — Transparency and the management of large catalogues

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

The CDPA does not contain any transparency rules specifically geared to copyright contracts. However, the issue of transparency in contracts with authors and performers has been the subject of much debate in initiatives undertaken both by the UK Parliament²⁴ and the UK government²⁵ in the context of music streaming. This work resulted in a Voluntary Code of Good Practice on Transparency in Music Streaming which has been signed by music industry associations and collecting societies.²⁶

Transparency rules also feature in the legal framework governing collective administration.

On the basis of the EU Directive on Collective management the UK has put in place Regulation 17 of the Collective Management of Copyright (EU Directive) Regulations 2016:

Information provided to right holders

‘17.—(1) A collective management organisation and an independent management entity must make available not less than once a year to each right holder to whom—

(a) it has attributed rights revenue, or

(b) made payments,

in the period to which the information relates, at least the information specified in paragraph (2).

(2) The information specified in this paragraph is—

²⁴ <https://committees.parliament.uk/work/646/economics-of-music-streaming>.

²⁵ <https://www.gov.uk/guidance/the-governments-work-on-music-streaming>.

²⁶ <https://www.gov.uk/guidance/uk-voluntary-code-of-good-practice-on-transparency-in-music-streaming>.

(a) contact details which the right holder has authorised the collective management organisation or the independent management entity to use in order to identify and locate the right holder;

(b) the rights revenue attributed to the right holder;

(c) the amount paid by the collective management organisation or the independent management entity to the right holder for each category of right managed and for each type of use;

(d) the period during which the use took place for which amounts were attributed and paid to the right holder unless objective reasons relating to reporting by users prevent the collective management organisation or the independent management entity from providing this information;

(e) deductions made in respect of management fees;

(f) deductions made for any other purpose other than in respect of management fees, including those that may be legally required for the provision of social, cultural or educational services; and

(g) rights revenue attributed to the right holder which is outstanding for a period.

(3) A collective management organisation and an independent management entity must provide the information specified in paragraph (2) to the person referred to in sub-paragraph (b) where—

(a) it attributes rights revenue to right holders;

(b) it has a member an entity which is responsible for the distribution of rights revenue to right holders; and

(c) that member does not have that information in their possession.

(4) The member to whom information is supplied under paragraph (3) must make available not less than once a year the information specified in paragraph (2) to each right holder to whom the member has attributed rights revenue or made payments in the period to which the information relates.'

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>)?

Not quite but this ongoing case may be of interest:

Noel Redding Estate Ltd v Sony Music Entertainment UK Ltd [2025] EWCA Civ 66 | [2025] 2 WLUK 64 | [2025] E.C.D.R. 15 | [2025] F.S.R. 14 | [2025] E.C.C. CD12 and *Noel Redding Estate Ltd v Sony Music Entertainment UK Ltd*, Chancery Division [2025] 7 WLUK 253 as a follow up. The substantive case is expected to go to trial at the end of the year.

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