



SURVEY on the Protection of Audiovisual Performances

**in the Beijing Treaty, in the Legislations of the European Union,
and Certain Member States of the EU and EEA**

Jukka Liedes, Jukka Kortelainen and Milla Määttä

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Abstract	<p>The Ministry of Education and Culture gave in November 2013 the Finnish Copyright Society to undertake a set of studies for the development of copyright policy and legislation. This survey is part of this cooperation contract. The main part of the work was done in 2016.</p> <p>The survey provides an overview of the (related rights) protection of performing artists (actors, dancers, musicians) in the context of audiovisual productions, in cinematographic films and television.</p> <p>The survey focuses on the content of the Beijing Treaty on Audiovisual Performances (2012), Directives of the European Union, as well as the national legislations of a number of Member States of the European Union and the European Economic Area.</p> <p>The national legislation of the following 17 countries have been included in the survey: Finland, Denmark, Iceland, Norway and Sweden, as well as Austria, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Netherlands, Spain, Switzerland, and United Kingdom.</p> <p>National copyright acts have been examined on the basis of the English translations, and when possible also on the basis of the original language versions of the acts. The authors have observed that the availability and being up-to-date, as well accuracy, of the national legislations and their translations varies considerably. The search and scrutiny of the texts increased the amount of work.</p> <p>This overview does not include any analysis of the history, application or details of the provisions, but a mere identification of the protective elements in the target texts, which is based on a prima facie interpretation of the provisions. The survey could act as a basis for a separate and deeper analytic study.</p> <p>The survey contains a short synthetic commentary on its subject matter, and a short analysis on the differences between the scope of protection in Denmark, Norway and Sweden, and in Finland.</p>	
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Tiivistelmä	<p>Opetus- ja kulttuuriministeriö antoi marraskuussa 2013 Suomen Tekijänoikeudellinen yhdistys ry:lle tehtäväksi toteuttaa joukon selvityksiä tekijänoikeuspolitiikan ja lainsäädännön kehittämistä varten. Tämä selvitys perustuu mainittuun toimeksiantoon. Työ tehtiin pääosin vuonna 2016.</p> <p>Selvityksessä tarkasteltiin esittävien taiteilijoiden (näyttelijät, tanssijat, muusikot) lähioikeussuojaa audiovisuaalisten tuotantojen, elokuvan ja television alueilla.</p> <p>Läpikäynti ulottuu suojaa koskeviin määräyksiin Pekingin audiovisuaalisten esitysten suojaa koskevassa sopimuksessa (2012), Euroopan unionin direktiivien määräyksiin ja kansalliseen lainsäädäntöön valituissa Euroopan unioniin ja Euroopan talousalueeseen kuuluvissa valtioissa.</p> <p>Selvityksessä tarkasteltiin seuraavien 17 valtion kansallista lainsäädäntöä: Suomi, Tanska, Norja ja Ruotsi, sekä Itävalta, Tšekin tasavalta, Viro, Ranska, Saksa, Kreikka, Unkari, Irlanti, Hollanti, Espanja, Sveitsi ja Yhdistynyt kuningaskunta.</p> <p>Kansallisia tekijänoikeuslakeja on tarkasteltu englanninkielisten käännösten pohjalta ja, silloin kun mahdollista, myös lakien alkuperäisten kieliversioiden pohjalta. Selvityksen tekijät ovat huomauttaneet, että kansallisten lainsäädäntöjen saatavuus ja ajantasaisuus samoin kuin niiden käännösten tarkkuus vaihtelee melkoisesti. Etsintä ja tekstien tarkistaminen lisäävät tästä syystä huomattavasti lakien sisällön vertailun työmäärää.</p> <p>Tämä läpikäynti ei sisällä lakien säännösten historian tai soveltamisen eikä niiden yksityiskohtien analyysia. Selvityksessä pelkästään identifioidaan kohteena olevien lakitekstien suojaa koskevat säännökset säännösten <i>prima facie</i> -tulkinnan pohjalta. Selvitys voisi toimia tukena erillisen perusteellisemmän analyysin tekemisessä.</p> <p>Selvityksen alussa on lyhyt synteettinen kommentaari selvityksen kohteena olevasta asiasta. Siihen sisältyy myös lyhyt analyysi Tanskassa, Norjassa ja Ruotsissa omaksutun suojan ja Suomessa vallitsevan suojan eroavuudesta.</p>		
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Referat	<p>Undervisnings- och kulturministeriet gav i november 2013 Upphovsrättsliga Föreningen i Finland i uppgift att utföra ett antal undersökningar för att utveckla riktlinjer för och lagstiftningen av upphovsrätter. Undersökningen utgör en del av detta samarbetsavtal. Merparten av arbetet blev klart 2016.</p> <p>Undersökningen ger en överblick av (relaterade rättigheter) skyddet för artister (skådespelare, dansare, musiker) inom audiovisuell produktion, kinematografiska filmer och television.</p> <p>Undersökningen fokuserar på innehållet i Pekingfördraget gällande audiovisuella framföranden (2012), Europeiska unionens direktiv och även nationell lagstiftning i vissa medlemsstater inom Europeiska unionen och Europeiska ekonomiska samarbetsområdet.</p> <p>Den nationella lagstiftningen i följande 17 länder ingår i undersökningen: Finland, Danmark, Island, Norge och Sverige samt Österrike, Tjeckien, Estland, Frankrike, Tyskland, Grekland, Ungern, Irland, Nederländerna, Spanien, Schweiz och Storbritannien.</p> <p>Nationella upphovsrättslagar har undersökts utifrån översättningar till engelska och när det varit möjligt även utifrån versioner på originalspråket. Författarna upptäckte att tillgången till och uppdateringen av och även exaktheten mellan de nationella lagstiftningarna och översättningarna av dem varierar avsevärt. Sökandet efter och granskningen av texterna ökade arbetsbördan.</p> <p>Denna översikt innehåller inte någon analys av historiken, tillämpning av eller detaljer i bestämmelserna, utan snarare en identifikation av skyddande element i måltexten och baseras på en tolkning av bestämmelserna vid första påseendet. Undersökningen kan användas för en separat och djupare analytisk studie.</p> <p>Undersökningen innehåller en kort syntetisk kommentar om ämnet och en kort analys om skillnaderna mellan omfattningen av skyddet i Danmark, Norge, Sverige och Finland.</p>		
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FOREWORD

The Ministry of Education and Culture contracted in November 2013 the Finnish Copyright Society to undertake a set of studies for the development of copyright policy and legislation. This survey is part of this assignment based on the cooperation contract.

This survey provides an overview of the (related rights) protection of performing artists (actors, dancers, musicians) in the context of audiovisual productions, in cinematographic films and television.

Attention has been paid to the content of the Beijing Treaty on Audiovisual Performances adopted in Beijing, June 24, 2012, Directives of the European Union, as well as the national legislations of a number of Member States of the European Union and the European Economic Area. National copyright acts have been examined on the basis of the English translations, and when possible also on the basis of the original language versions of the acts. The availability and being up-to-date, as well accuracy, of the national legislations and their translations varied considerably, and the search and scrutiny of the texts increased the amount of work.

The national legislation of the following 17 countries have been included in the survey: Finland, Denmark, Iceland, Norway and Sweden, as well as Austria, Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Netherlands, Spain, Switzerland, and United Kingdom.

It should be emphasized that the survey is most “mechanistic”, and it does not include any analysis of the history, application or details of the provisions, but a mere identification of the protective elements in the target texts, which is based on a prima facie interpretation of the provisions. The survey could act as a basis for a separate and deeper analytic study.

The survey was made between November 2015 and May 2016. It was prepared by the Chairman of the Finnish Copyright Society, Jukka Liedes, and the Masters of Social Sciences Jukka Kortelainen and Milla Määttä. A short analysis on the differences between the

scope of protection of Denmark, Norway and Sweden, and of Finland, (pp. 7 - 11) was added in May 2018.

In May 2016 and May 2018

Jukka Liedes

Jukka Kortelainen

Milla Määttä

RESULTS IN SHORT – A SUMMARY TABLE

Table 1. Economic rights in audiovisual performances in the Beijing Treaty (2012), in the Legislations of the European Union, and Certain Member States of the EU and EEA

	Live performances – Exclusive Rights			Fixed Performances – Exclusive Rights							Rights to Remuneration	
	Fixation	Broadcasting and Communication to the Public	Reproduction	Distribution	Rental (and lending)	Making available	Broadcasting	Communication to the public	Public performance	Other	Rental	Broadcasting or Communication to the Public
Beijing Treaty	X	X	X	X	P	X	N	N	N			N
European Union directives	X	X	X	X	X	X					X	
EU and EEA countries												
Denmark	X	X	X	X	X	X	X	X	X		X	
Finland	X	X	X	X	X	X					X	
Iceland	X	X	X	X	X						X	
Norway	X	X	X	X	X	X	X	X	X		X	
Sweden	X	X	X	X	X	X	X	X	X		X	
Austria	X	X	X	X	X	X	P	P			X	
Czech Republic	X	X	X	X	X	X	?	X	?		X	
Estonia	X	X	X	X	X	X				X	X	
France	X	X	X	X	X	X	X	X	X	X		
Germany	X	X	X	X	X	X			R		X	X
Greece	X	X	X	X	X	X	P	P			X	X
Hungary	X	X	X	X	X	X					X	
Ireland	X	X	X	X	X	X	X		X	X	X	
Netherlands	X	X	X	X	X	X	X	X	?		X	X
Spain	X	X	X	X	X	X	?	P	?		X	X
Switzerland	X	X	X	X	X	X	X	X	X		X	X
United Kingdom	X	X	X	X	X	X					X	

P = Partially covered

N = No obligation

R = Right to remuneration (in other cases than broadcasting or communication to the public)

? = Unclear

SHORT SYNTHETIC COMMENTARY (Economic Rights)

Beijing Treaty

The Beijing Treaty on Audiovisual Performances (2012) sets a new standard for international protection of performers for their performances in the audiovisual context. It grants exclusive rights for performers as to their live performances for broadcasting and communication to the public. As for the fixed performances, the Beijing Treaty grants a performer exclusive rights concerning reproduction, distribution and rental. The obligation to provide the right of rental is, however, conditioned by an impairment test. If the commercial rental does not lead to widespread copying of fixations which materially impairs the right of reproduction, the Contracting Parties are exempt for the obligation to provide the right of rental.

As to broadcasting and communication to the public of fixed performances, Article 11 of the Beijing Treaty contains a flexible scheme. The basic standard is an exclusive right. The Contracting Parties may instead of an exclusive right establish a right to equitable remuneration for the use of audiovisual fixations for broadcasting or communication to the public. The Contracting Parties may also set conditions from the exercise of the right to remuneration.

Finally, the Contracting Parties may apply the right of broadcasting and/or communication to the public only in respect of certain uses, or limit their application in some other way, or abstain from applying the right of broadcasting and/or communication to the public.

All deviances from exclusive rights are subject to a notification or declaration by the Contracting Parties.

It should be noted that the Beijing Treaty follows the “related rights notion” concerning communication to the public (in line with Article 12 of the Rome Convention). Commu-

nication to the public means any other transmission to the public than broadcasting. For the purposes of Article 11 (on broadcasting and communication to the public) the communication to the public covers also making a fixed performance audible or visible to the public (public performance). These are effects of the definition of “communication to the public” in Article 2(d) of the Treaty. This follows the style of the definition of “communication to the public” in Article 2(g) of the WPPT¹ and the operative provisions in Article 15 of the WPPT.

Directives of the EU

The rights of performers for their audiovisual performances are in the EU harmonized by the Rental and Lending directive and the InfoSoc directive.² The EU standard corresponds the minimum protection of the Beijing Treaty, *i.e.* all other rights except the rights for broadcasting and communication to the public of fixed performances are provided for.

The right of fixation and the right of broadcasting and communication to the public of live performances are harmonized in the Rental and Lending directive. The same directive harmonises also the right of distribution and the right of rental, as well as the right of equitable remuneration for rental. To provide for an unwaivable right to remuneration is a mandatory obligation of the directive.

The right of reproduction and the right of making available to the public of fixed performances are harmonized in the InfoSoc directive.

Member States of the EU and EEA

The copyright legislations of all Member States of the EU and EEA covered by this survey contain a protection that corresponds the minimum of the Beijing Treaty and the EU aquis concerning live and fixed performances.

1 WIPO Performances and Phonograms Treaty (1996)

2 Directive 92/100/EEC, as codified 2006/115/EC (“Rental and Lending”), and Directive 2001/29/EC (“InfoSoc”)

The minimum protection consists of the following elements:

Live performances:

- right of fixation
- right of broadcasting and communication to the public

Fixed performances:

- right of reproduction
- right of distribution
- right of rental
- right of making available to the public

Varying levels of protection are found in the area of broadcasting and communication to the public.

It should be noted that in Denmark, Norway and Sweden the performers enjoy broad exclusive rights for performances fixed in audiovisual fixations, including exclusive rights for broadcasting and communication to the public. Such rights are not accorded to the performers under the Finnish Copyright Act.

In the following, a short explanation of the history of this crucial difference of the protection of performances fixed in audiovisual fixations is presented.

It should also be pointed out that in Denmark and Norway these rights are provided without the so-called “film presumption”. In Sweden the presumption on transfer of rights to the producer of Section 39 is applied through a reference in Section 45(3) of the Swedish Copyright Act.

Certain provisions of copyright acts on broadcasting and communication to the public in other EU and EEA Member States are difficult to read and interpret.

The “copyright language” and “related rights language” is not always used coherently and in conformity with the Berne Convention and the Rome Convention and the directives.

Evolution of the protection of Audiovisual Performances in Denmark, Norway and Sweden – and in Finland

How and when did the protection of audiovisual performances in Denmark, Norway and Sweden grow apart from the protection of audiovisual performances in Finland?

The basic provisions on the protection of performing artists in the copyright acts of the Nordic Countries (“Continental Nordic Countries”, *i.e.* Denmark, Finland, Norway and Sweden) were maintained rather similar, in parallel, until the 1990’s. An exception from this was the provisions on remuneration for secondary uses of performances recorded on phonograms. In this area there were crucial differences between the Nordic Countries.

The basic provisions on the protection of performing artists covered all performing artists, including audiovisual performances and audiovisual uses of performances, from the very establishment of the Nordic legislation in 1960 and 1961 (fixation, reproduction, and live performances in television).

The co-ordinated work between the Nordic Countries to revise the national copyright legislations started in 1976/1977, when the Nordic Council of Ministers established a Nordic Revision process. Each Nordic Country formed up a national Revision Committee. The Chairmen of the Revision Committees of the Nordic countries together with the secretaries of the national Committees formed a Nordic Working Group. The work progressed first theme by theme, and then, to some degree, chapter by chapter.

Initial discussions on all themes for revision were first discussed in the Nordic Working Group, and all of its conclusions were subject to national preparation and debates.

Discussion on the revision of the neighbouring rights, laid down in Chapters 5 of the coordinated Nordic Copyright Acts, started early in the 1980’s. One of the first questions was whether the protection of performers should be based, instead of the concept laid down in Chapter 5 for neighbouring rights, on a concept very near or identical to the protection of authors in Chapter 1 of the Copyright Acts. (See p. 8)

An understanding emerged between the Nordic experts that the objective of the forthcoming revision of the neighbouring rights should be to align the protection of performers to that of authors of copyrighted works. If full assimilation would be considered problematic, the objective should be, at least, to bring performers’ protection nearer to copyright. This did not exclude similar considerations on the protection of producers of phonograms and radio and television organisations.

The Danish Copyright Revision Committee was the first to propose in 1982 that the basic protection of performing artists in audiovisual productions should, in all most relevant aspects, be based on concepts very much identical to the protection of authors, instead of the specific or *sui generis* protection of Chapter 5 of the Copyright Act. This did not lead to immediate legislative conclusions in Denmark.

The same question was dealt with by the other three national revision Committees. Also the Finnish Committee, in its report of 1987, started its deliberations on the protection of performing artists with the question whether the performing artists should be assimilated to the creative authors, and their performances be protected similarly to their works under Section 1 of the Copyright Act.

Denmark, Norway, and Sweden arrived at their solutions historically virtually simultaneously in 1995. The performing artists were accorded the full right of making available to the public, in the same way as was already the case of authors, without making any distinction between live or recorded performances, and without distinction between aural and audiovisual performances.

In all Nordic Countries it was considered that the development of the market and technology had led to an increased need for additional protection. In Finland, the steps taken were, however, shorter than in the other Nordic Countries. In Denmark, Norway, and Sweden, the contract-making practices and the market have adapted themselves to this enhanced level of protection.

In the following, some additional technical details on the national solutions are presented in short.

Denmark

The Danish national revision Committee started its considerations with a reference to the fact that earlier the performances of performing artists were ephemeral, only the persons who were present at the place of the performance could hear and see it (*Beskyttelse a kunstneriske praestationer. 3. Delbetænkning fra udvalget vedrørende revision af ophavsretslovgivningen. Betænkning nr. 962. København 1982*). Nowadays the modern means of recording have changed the situation completely. A performance can be used in a practically unlimited way. This has led to claims for enhanced protection.

The Danish committee first asks whether the protection of performing artists should be covered by copyright instead of the specific protection under Chapter 5 of the Copyright Act. The Committee, however find copyright proper problematic because i.a. it would not allow a shorter term of protection, and it would require that the protection be based on the artistic

level and individuality of the performance. The Committee arrives at the conclusion that the protection shall be maintained as a protection of performances of protected works.

Finally the majority of the members of the Committee arrive at a proposal that the protection should cover a) recording of the performance on tape, film or any other device by means of which it can be reproduced, and b) making it available to the public. The interpretation of “making available to the public” would be sought from Section 2 of the Act, dealing with copyright of authors.

Section 65 of the Danish Copyright Act was amended accordingly in 1995 (Act No, 395 of June 14 1995, on Copyright).

According to Section 86 of the Act the provisions of Section 65 apply to performances that have taken place in countries belonging to the European Economic Area.

Norway

The Norwegian revision Committee went through similar considerations in its report of 1983 (NOU 1983:35. Endringer i åndsverksloven m.v.). The Committee proposed that the performance may not, without the consent of the performing artist, a) be recorded on a phonogram, film, sound recording or other device by which it may be reproduced, b) broadcast (live), or c) otherwise by technical means be made available to other persons than the ones to whom the performing artist is directly performing.

Section 42 of the Norwegian Copyright Act was amended 1995, following the proposal by the Committee of 1983, somewhat simplified (Lov 2 juni 1995 nr. 27 – Lov om endringer i åndsverksloven mm.).

Finally, in 2005 Norway accorded to performing artists an unqualified right of making available of the performance to the public (Lov 17. juni 2005 nr. 97). According to the current text of Section 42 of the Norwegian Copyright Act, a performing artist has the exclusive right to dispose of the performance by a) making temporary or permanent fixation of the performance, b) producing permanent or temporary copies of a fixation of the performance, and 3) making the performance of a fixation of the performance available to the public (...).

According to the provisions in Section 58 of the Norwegian Copyright Act, Norway is, under the provisions on the points of attachment, somewhat less generous than Denmark. Section 42 applies mainly to nationals of Norway, performances and broadcasts which take place in Norway, and the right of distribution applies to sound and film fixations made in Norway.

Sweden

The Swedish revision Committee dealt with neighbouring rights in its report of 1983 (SOU 1983:65. Översyn av upphovsrättslagstiftningen. Delbetänkande 2 som behandlar närstående rättigheter, enskilt bruk och videogram).

After similar considerations to the other Nordic committees, the Swedish Committee arrived at the conclusions that, first, the protection of performing artists shall be regulated by specific provisions, and not by the “proper” copyright, and secondly, that the protection shall be confined to protect a performance of a literary or artistic work, and not limited to the protection of an artistic performance as such. The Committee made a rather conservative proposal to amend Section 45 of the Swedish Copyright Act, and did not propose a general right of making performances available to the public.

However, the right of making available to the public of a performance, recorded on a material support, was added to Section 45(2) in 1995 (Law No. 1273, of December 7, 1995).

In the present text of Section 45 the right of making a performance available to the public is included in the enumerated list of rights in the first paragraph (Act (2005:359) of May 26, 2005, amending the Act (1960:729) on Copyright in Literary and Artistic Works). A performing artist has (...) the exclusive right to dispose over his/her performance of a literary or artistic work (...) by 1) recording the performance on a phonogram, film or another device by which it can be reproduced, 2) produce copies of a recording of the performance, and 3) make the performance or a recording of the performance available to the public.

According to Article 61 of the Swedish Copyright Act, the provisions of Article 45, 47 and 48 apply to performances, sound recordings and sound radio and television broadcasts which take place in Sweden. In addition, the provisions of Article 45 apply to performances of persons who are Swedish nationals or have their habitual residence in Sweden.

Finland

As referred to above, the deliberations on the revision of the protection of performing artists were, in the Committee Report 1987:7, started by the question whether the protection should in the future be based on the concept of copyright, and the performers assimilated to authors of copyrighted works.

Several problems for acknowledging a copyright proper were identified, among them, as one of the most crucial, the issue of the threshold of protection. The question was whether the protection should be accorded to the performances on the basis of the qualities / creative level of the performance, or of the mere fact that the performance is a performance of a protected work.

The result was that the Finnish Committee did not propose any profound change of the basis or the concept of protection, but made a conservative proposal to clarify the provisions in Section 45 of the Copyright Act by enumerating the provisions in the first paragraph of Section 45.

The main steps of the revision of the provisions on related rights in Finland took place in 1990–1991, on the basis of the aforementioned proposal by the revision Committee, and 2004–2006, on the basis of the 1996 WIPO Performances and Phonograms Treaty (WPPT), as well as the European Union Information Society Directive /2001/29/EC.

In the Bill of 1990 (1990 vp–HE n:o 161, the amendments entered into force on January 16, 1991) it was proposed that Section 45(1) be clarified by enumerating the provisions on the right of reproduction and making available to the public. The structure and concepts of the provisions originally adopted in 1961 were maintained. Section 45(1)(2) was confined to making available to the public through radio and television, and by direct communication. The whole section covered clearly both audiovisual uses of performances and aural uses of them. In the 1991 revision the term of protection was prolonged from 25 years to 50 years, counted from the end of the year of the recording of the performance.

The next major step of revision took place in 2006 on the basis of the Bill of 2004 (HE 28/2004 vp, the amendments entered into force on January 1, 2006). In this revision the provisions relating to recorded performances in Section 45(2) were split in an amended 45(2) on recorded aural performances (on phonograms) and a new 45(3) on recorded audiovisual performances. The new right of online making available to the public of the recorded performances was included in both provisions, as the WPPT and the 2001 Directive required.

In Section 45(2) the basic concepts on the protection of **performances recorded on phonograms** were aligned to the concepts now used also for authors' rights in Section 2 of the Act. The rights continued to be enumerated, and the list was complemented to cover all rights concerning the making available to the public of the protected subject matter. The exclusive rights were complemented by the right of public performance to an audience present in the place of performance and the right of communication to the public by wire or wireless means. The latter includes explicitly also the communication of the recorded performance in a manner which enables members of the public to access the performance from a place and at the time individually chosen by them.

The content of the protection of **recorded audiovisual performances** was maintained as it was before these amendments in Section 45(2), except the aforementioned new element of the right on online making available of the recorded performance, and the enumeration of rights. The rights included 1) fixation and reproduction, 2) on demand making available to

the public, and 3) distribution of recorded performances. Hence, the protection of audio-visual performances does not extend to public performances nor to communication to the public by wire or wireless means (except the online making available to the public).

The Structure of Protection of Audiovisual Performances

1. Framework Provisions

- 1.1. Definitions
- 1.2. National Treatment

2. Moral Rights

- 2.1. Paternity Right
- 2.2. Integrity Right

3. Live Performances – Exclusive Rights

- 3.1. Right of Fixation
- 3.2. Broadcasting and Communication to the Public

4. Fixed Performances – Exclusive Rights

- 4.1. Right of Reproduction
- 4.2. Right of Distribution
- 4.3. Right of Rental
- 4.4. Right of Making Available to the Public of Fixed Performances
- 4.5. Right of Broadcasting
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- 4.7. Right of Public Performance
- 4.8. Any other Exclusive Right concerning Fixed Performances

5. Rights to Remuneration

- 5.1. Right to Remuneration for Rental of a Copy of a Film
- 5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film
- 5.3. Any other Right to Remuneration

6. Presumptions (unless otherwise agreed)

- 6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)
- 6.2. Any Other Presumption

7. Transfer of Rights

8. Additional Information (if available)

- 8.1. Applicability
- 8.2. Limitations
- 8.3. Other Possible Specificities

Beijing Treaty on Audiovisual Performances

Adopted in Beijing, June 24, 2012.

Standard of protection

1. Framework Provisions

1.1. Definitions

Article 2

1.2. National Treatment

Articles 3, 4

2. Moral Rights

2.1. Paternity Right

Article 5, sub-articles 1(i), 2, 3

2.2. Integrity Right

Article 5, sub-articles 1(ii), 2, 3

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Article 6(i)

3.2. Broadcasting and Communication to the Public

Article 6(ii)

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Article 7

4.2. Right of Distribution

Article 8

4.3. Right of Rental

Article 9

- Nb. Contracting Parties may provide the right of rental subject to a “material impairment test”.

- No right of lending in the Beijing Treaty.

4.4. Right of Making Available to the Public of Fixed Performances

Article 10

4.5. Right of Broadcasting

Article 11(1)

- Nb. “broadcasting” means the transmission by wireless means, Art. 2(c)

4.6. Right of Communication to the Public

Article 11(1)

- Nb. "communication to the public" of a performance means the transmission to the public by any medium, otherwise than by broadcasting, Art. 2(d)
- Nb. "communication to the public" includes making a performance fixed in an audiovisual fixation audible or visible or audible and visible to the public, Art 2(d). This is in fact public performance (of a fixed performance)

4.7. Right of Public Performance

- Right of public performance, i.e. "making a performance fixed in an audiovisual fixation audible or visible or audible and visible to the public" is according to Article 2(d) (Definitions) part of the right of communication under Article 11(1) of the Beijing Treaty.

4.8. Any other Exclusive Right concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

- No such right in the Beijing Treaty.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- Under Article 11(2) the Contracting Parties may reduce the exclusive right provided in Article 11(1) to a right of remuneration for broadcasting or for communication to the public.
- Under Article 11(3) the Contracting Parties may limit the application of provisions in Article 11(1) and 11(2) in any way or declare that they do not apply them at all.
- Under Article 11(3) (Transfer of Rights) the Contracting Parties may provide that irrespective of the transfer of exclusive rights performers may retain rights to receive royalties or equitable remuneration for any use.

5.3. Any other Right to Remuneration

- No other rights to remuneration.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

- No such specific presumption

6.2. Any Other Presumption

- Under Article 12(1) (Transfer of Rights) the Contracting Parties may provide a presumption of ownership, exercise or transfer of the exclusive rights once a performer has consented to a fixation of his/her performance.

7. Transfer of Rights

Article 12

Article 12(1): Presumption presented above

Article 12(2): Contracting Parties may set as a condition that the consent of the performer be in writing

Article 12(3): Independent of the transfer, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

Article 13, follows precisely the WPPT model.

8.3. Other Possible Specificities

Provisions of the Beijing Treaty (2012)

1. Framework Provisions

1.1. Definitions

Definitions

Article 2

For the purposes of this Treaty:

- a. “performers” are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore³;
- b. “audiovisual fixation” means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device⁴;
- c. “broadcasting” means the transmission by wireless means for public reception of sounds or of images or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- d. “communication to the public” of a performance means the transmission to the public by any medium, otherwise than by broadcasting, of an unfixed performance, or of a performance fixed in an audiovisual fixation. For the purposes of Article 11, “communication to the public” includes making a performance fixed in an audiovisual fixation audible or visible or audible and visible to the public.

1.2. National Treatment

Beneficiaries of Protection

Article 3

1. Contracting Parties shall accord the protection granted under this Treaty to performers who are nationals of other Contracting Parties.
2. Performers who are not nationals of one of the Contracting Parties but who have their habitual residence in one of them shall, for the purposes of this Treaty, be assimilated to nationals of that Contracting Party.

National Treatment

Article 4

1. Each Contracting Party shall accord to nationals of other Contracting Parties the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty and the right to equitable remuneration provided for in Article 11 of this Treaty.
2. A Contracting Party shall be entitled to limit the extent and term of the protection accorded to nationals of another Contracting Party under paragraph (1), with respect to the rights granted in Article 11(1) and 11(2) of this Treaty, to those rights that its own nationals enjoy in that other Contracting Party.
3. The obligation provided for in paragraph (1) does not apply to a Contracting Party to the extent that another Contracting Party makes use of the reservations permitted by Article 11(3) of this Treaty, nor does it apply to a Contracting Party, to the extent that it has made such reservation.

2. Moral Rights

2.1. Paternity Right

Moral Rights

Article 5, sub-articles 1(i), 2, 3

1. Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in audiovisual fixations, have the right:
 - i. to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and
2. The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.
3. The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed⁵.

⁵ Agreed statement concerning Article 5: For the purposes of this Treaty and without prejudice to any other treaty, it is understood that, considering the nature of audiovisual fixations and their production and distribution, modifications of a performance that are made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats, and that

are made in the course of a use authorized by the performer, would not in themselves amount to modifications within the meaning of Article 5(1)(ii). Rights under Article 5(1)(ii) are concerned only with changes that are objectively prejudicial to the performer's reputation in a substantial way. It is also understood that the mere use of new or changed technology or media, as such, does not amount to modification within the meaning of Article 5(1)(ii).

2.2. Integrity Right

Moral Rights

Article 5, sub-articles 1(ii), 2, 3

1. Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in audiovisual fixations, have the right:
 - ii. to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation, taking due account of the nature of audiovisual fixations.
2. The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.
3. The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed⁵.

⁵ Agreed statement concerning Article 5: For the purposes of this Treaty and without prejudice to any other treaty, it is understood that, considering the nature of audiovisual fixations and their production and distribution, modifications of a performance that are made in the normal course of exploitation of the performance, such as editing, compression, dubbing, or formatting, in existing or new media or formats, and that are made in the course of a use authorized by the performer, would not in themselves amount to modifications within the meaning of Article 5(1)(ii). Rights under Article 5(1)(ii) are concerned only with changes that are objectively prejudicial to the performer's reputation in a substantial way. It is also understood that the mere use of new or changed technology or media, as such, does not amount to modification within the meaning of Article 5(1)(ii).

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Economic Rights of Performers in their Unfixed Performances

Article 6 (i)

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

- i. the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and

3.2. Broadcasting and Communication to the Public

Economic Rights of Performers in their Unfixed Performances

Article 6 (ii)

- ii. the fixation of their unfixed performances

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Right of Reproduction

Article 7

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in audiovisual fixations, in any manner or form.⁶

Agreed statement concerning Article 7: The reproduction right, as set out in Article 7, and the exceptions permitted thereunder through Article 13, fully apply in the digital environment, in particular to the use of performances in digital form. It is understood that the storage of a protected performance in digital form in an electronic medium constitutes a reproduction within the meaning of this Article.

4.2. Right of Distribution

Right of Distribution

Article 8

1. Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in audiovisual fixations through sale or other transfer of ownership.
2. Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.⁷

⁷ Agreed statement concerning Articles 8 and 9: As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refers exclusively to fixed copies that can be put into circulation as tangible objects.

4.3. Right of Rental (and lending)

Right of Rental

Article 9

1. Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in audiovisual fixations as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.
2. Contracting Parties are exempt from the obligation of paragraph (1) unless the commercial rental has led to widespread copying of such fixations materially impairing the exclusive right of reproduction of performers⁸.

⁸ Agreed statement concerning Articles 8 and 9: As used in these Articles, the expression "original and copies," being subject to the right of distribution and the right of rental under the said Articles, refers exclusively to fixed copies that can be put into circulation as tangible objects.

4.4. Right of Making Available to the Public of Fixed Performances

Right of Making Available of Fixed Performances

Article 10

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in audiovisual fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them. page 7

⁹ Agreed statement concerning Article 13: The Agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty (WCT) is applicable *mutatis mutandis* also to Article 13 (on Limitations and Exceptions) of the Treaty.

4.5. Right of Broadcasting

Right of Broadcasting and Communication to the Public

Article 11 (1)

1. Performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.
2. Contracting Parties may in a notification deposited with the Director General of WIPO declare that, instead of the right of authorization provided for in paragraph (1), they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or for communication to the public. Contracting Parties may also declare that they will set conditions in their legislation for the exercise of the right to equitable remuneration.

3. Any Contracting Party may declare that it will apply the provisions of paragraphs (1) or (2) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply the provisions of paragraphs (1) and (2) at all.

4.6. Right of Communication to the Public

Right of Broadcasting and Communication to the Public

Article 11 (1)

1. Performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.
2. Contracting Parties may in a notification deposited with the Director General of WIPO declare that, instead of the right of authorization provided for in paragraph (1), they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or for communication to the public. Contracting Parties may also declare that they will set conditions in their legislation for the exercise of the right to equitable remuneration.
3. Any Contracting Party may declare that it will apply the provisions of paragraphs (1) or (2) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply the provisions of paragraphs (1) and (2) at all.

4.7. Right of Public Performance

Right of Broadcasting and Communication to the Public

Article 11 (1)

1. Performers shall enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.
2. Contracting Parties may in a notification deposited with the Director General of WIPO declare that, instead of the right of authorization provided for in paragraph (1), they will establish a right to equitable remuneration for the direct or indirect use of performances fixed in audiovisual fixations for broadcasting or for communication to the public. Contracting Parties may also declare that they will set conditions in their legislation for the exercise of the right to equitable remuneration.

3. Any Contracting Party may declare that it will apply the provisions of paragraphs (1) or (2) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply the provisions of paragraphs (1) and (2) at all.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

No such right

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- Under Article 11(2) the Contracting Parties may reduce the exclusive right provided in Article 11(1) to a right of remuneration for broadcasting or for communication to the public.
- Under Article 11(3) the Contracting Parties may limit the application of provisions in Article 11(1) and 11(2) in any way or declare that they do not apply them at all.
- Under Article 11(3) (Transfer of Rights) the Contracting Parties may provide that irrespective of the transfer of exclusive rights performers may retain rights to receive royalties or equitable remuneration for any use.

5.3. Any Other Right to Remuneration

No other right to remuneration.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

No such specific presumption

6.2. Any Other Presumption

- Under Article 12(1) (Transfer of Rights) the Contracting Parties may provide a presumption of ownership, exercise or transfer of the exclusive rights once a performer has consented to a fixation of his/her performance.

7. Transfer of Rights

Transfer of Rights

Article 12

1. A Contracting Party may provide in its national law that once a performer has consented to fixation of his or her performance in an audiovisual fixation, the exclusive rights of authorization provided for in Articles 7 to 11 of this Treaty shall be owned or exercised by or transferred to the producer of such audiovisual fixation subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the national law.
2. A Contracting Party may require with respect to audiovisual fixations produced under its national law that such consent or contract be in writing and signed by both parties to the contract or by their duly authorized representatives.
3. Independent of the transfer of exclusive rights described above, national laws or individual, collective or other agreements may provide the performer with the right to receive royalties or equitable remuneration for any use of the performance, as provided for under this Treaty including as regards Articles 10 and 11.

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

Limitations and Exceptions

Article 13

1. Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.
2. Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance and do not unreasonably prejudice the legitimate interests of the performer.

8.3. Other Possible Specificities

European Union

Directives:

Directive 92/100/EEC, as codified 2006/115/EC (“Rental and Lending”)

Directive 2001/29/EC (“InfoSoc”)

Elements

1. Framework Provisions

1.1. Definitions

Article 2 (Rental and Lending): definitions of “rental”, “lending” and “film”, relevant for the protection of audiovisual performances.

1.2. National Treatment

- No clauses on national treatment in the EU Directives
- EU and its Member States apply those treaties they have adhered to
- In the EU, the Phil Collins principle (no discrimination concerning copyright and related rights on the basis of nationality)

2. Moral Rights

2.1. Paternity Right

- No moral rights in the EU Directives.

2.2. Paternity Right

- No moral rights in the EU Directives.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Article 7 (Rental and Lending)

3.2. Broadcasting and Communication to the Public

Article 8 (Rental and Lending)

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Article 2(b) (InfoSoc)

4.2. Right of Distribution

Article 9(a) (Rental and Lending)

4.3. Right of Rental (and lending)

Article 3(b) (Rental and Lending)

4.4. Right of Making Available to the Public of Fixed Performances

Article 3(2)(a) (InfoSoc)

4.5. Right of Broadcasting

- No such right for performers of audiovisual performances in the EU Directives.

4.6. Right of Communication to the Public

- No such right for performers of audiovisual performances in the EU Directives.

4.7. Right of Public Performance

- No such right for performers of audiovisual performances in the EU Directives.

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other rights for performers of audiovisual performances in the EU Directives.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Article 5 (Rental and Lending)

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- No such right for performers of audiovisual performances in the EU Directives.

5.3. Any Other Right to Remuneration

- No other rights for performers of audiovisual performances in the EU Directives.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Article 2(4): mandatory presumption of transfer of the rental right

Article 2(6): non-mandatory presumption of authorising rental, provided that such contract provides for an equitable remuneration.

6.2. Any Other Presumption

- No other presumptions.

7. Transfer of Rights

Article 9(4): transfer of the distribution right

- Nb. The provisions in the Rental and Lending Directive (92/100/EEC) on the transfer of the reproduction right have been abolished.

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

Article 10 (Rental and Lending), follows the Rome Convention model.

Article 5 (InfoSoc), applicable to the right of reproduction and to the right of communication and making available to the public.

8.3. Other Possible Specificities

Provisions of the EU Directives

Rental and Lending Directive

Directive 2006/115/EC of The European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (codified version)

InfoSoc Directive

Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society

1. Framework Provisions

1.1. Definitions

Definitions

Article 2 (Rental and Lending)

1. For the purposes of this Directive the following definitions shall apply:
 - a. 'rental' means making available for use, for a limited period of time and for direct or indirect economic or commercial advantage;
 - b. 'lending' means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public;
 - c. 'film' means a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.
2. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may provide for others to be considered as its co-authors.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Fixation right

Article 7 (Rental and Lending)

1. Member States shall provide for performers the exclusive right to authorise or prohibit the fixation of their performances.

3.2. Broadcasting and Communication to the Public

Broadcasting and communication to the public

Article 8 (Rental and Lending)

1. Member States shall provide for performers the exclusive right to authorise or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Reproduction right

Article 2 (InfoSoc)

Member States shall provide for the exclusive right to authorize or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

(...)

- b. for performers, of fixations of their performances;

4.2. Right of Distribution

Distribution right

Article 9 (Rental and Lending)

1. Member States shall provide the exclusive right to make available to the public, by sale or otherwise, the objects indicated in points (a) to (d), including copies thereof, hereinafter 'the distribution right':
 - a. for performers, in respect of fixations of their performances;

4.3. Right of Rental (and lending)

Rightholders and subject matter of rental and lending right

Article 3 (Rental and Lending)

1. The exclusive right to authorise or prohibit rental and lending shall belong to the following:
 - (...)
 - b. the performer in respect of fixations of his performance;
 - (...)
 - d. the producer of the first fixation of a film in respect of the original and copies of his film.

4.4. Right of Making Available to the Public of Fixed Performances

Right of communication to the public of works and right of making available to the public other subject-matter

Article 3 (InfoSoc)

2. Member States shall provide for the exclusive right to authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them:
 - a. for performers, of fixations of their performances;

4.5. Right of Broadcasting

No such right for performers of audiovisual performances in the EU Directives.

4.6. Right of Communication to the Public

No such right for performers of audiovisual performances in the EU Directives.

4.7. Right of Public Performance

No such right for performers of audiovisual performances in the EU Directives.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other rights for performers of audiovisual performances in the EU Directives.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Unwaivable right to equitable remuneration

Article 5 (Rental and Lending)

1. Where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain an equitable remuneration for the rental.
2. The right to obtain an equitable remuneration for rental cannot be waived by authors or performers.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such right for performers of audiovisual performances in the EU Directives.

5.3. Any Other Right to Remuneration

No other rights for performers of audiovisual performances in the EU Directives.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Rightholders and subject matter of rental and lending right

Article 2 (Rental and Lending)

4. Without prejudice to paragraph 6, when a contract concerning film production is concluded, individually or collectively, by performers with a film producer, the performer covered by this contract shall be presumed, subject to contractual clauses to the contrary, to have transferred his rental right, subject to Article 5.
6. Member States may provide that the signing of a contract concluded between a performer and a film producer concerning the production of a film has the effect of authorising rental, provided that such contract provides for an equitable remuneration within the meaning of Article 5. Member States may also provide that this paragraph shall apply *mutatis mutandis* to the rights included in Chapter II.

6.2. Any Other Presumption

No other presumptions.

7. Transfer of Rights

Distribution right

Article 9 (Rental and Lending)

1. The distribution right may be transferred, assigned or subject to the granting of contractual licences.

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

Limitations to rights

Article 10 (Rental and Lending)

1. Member States may provide for limitations to the rights referred to in this Chapter in respect of:
 - a. private use;
 - b. use of short excerpts in connection with the reporting of current events;
 - c. ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts;
 - d. use solely for the purposes of teaching or scientific research.
2. Irrespective of paragraph 1, any Member State may provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms, broadcasting organisations and of producers of the first fixations of films, as it provides for in connection with the protection of copyright in literary and artistic works.

However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.
3. The limitations referred to in paragraphs 1 and 2 shall be applied only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the rightholder.

Exceptions and limitations

Article 5 (InfoSoc)

[Article 5 of the InfoSoc Directive]

8.3. Other Possible Specificities

Denmark

Provisions of Consolidated Act on Copyright 2014, Denmark³

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³ Consolidated Act No. 1144 of October 23, 2014.

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Section 65, subsection 2

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4.7. Right of Public Performance

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4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 58a (applied by a reference in Section 65(6))

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- No such provision.

5.3. Any Other Right to Remuneration

- Remuneration for reproduction for private use

Section 39, subsections 1, 2 (applied by a reference in Section 65(6))

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

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- No other presumptions.

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8.3. Other Possible Specificities

Settlement and Control

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Inheritance

Section 61 (applied by a reference in Section 65(6))

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Provisions of Consolidated Act on Copyright 2014, Denmark

1. Framework Provisions

1.1. Definitions

1.2. National Treatment

2. Moral Rights

2.1. Paternity Right

Section 3, subsections 1, 3 (applied by a reference in Section 65(6))

1. The author of a work shall have the right to be identified by name as the author in accordance with the requirements of proper usage, on copies of the work as well as if the work is made available to the public.
3. The right of the author under this section cannot be waived except in respect of a use of the work which is limited in nature and extent.

2.2. Integrity Right

Section 3, subsections 2, 3 (applied by a reference in Section 65(6))

2. The work must not be altered nor made available to the public in a manner or in a context which is prejudicial to the author's literary or artistic reputation or individuality.
3. The right of the author under this section cannot be waived except in respect of a use of the work which is limited in nature and extent.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 65, subsection 1, subparagraph i

1. The performance of a literary or artistic work by a performing artist may not without his consent

- i. be recorded on tape, film or any other device by means of which it can be reproduced⁴

3.2. Broadcasting and Communication to the Public

Section 65, subsection 1, subparagraph ii

1. The performance of a literary or artistic work by a performing artist may not without his consent
 - ii. be made available to the public.

Section 2, subsections 3(iii), 4(i) (applied by a reference in Section 65(6))

3. The work is made available to the public if
 - iii. the work is performed in public.
4. Public performance within the meaning of subsection (3)(iii) shall include
 - i. communication to the public of works, by wire or wireless means, including broadcasting by radio or television and the making available to the public of works in such a way that members of the public may access them from a place and at a time individually chosen by them

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 65, subsection 2

2. Where a performance has been recorded as stated in subsection (1)(i), it must not without the consent of the performing artist be copied or be made available to the public until 50 years after the end of the year in which the performance took place. However, if a recording of the performance is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication, or the first such communication, whichever is the earlier.

4.2. Right of Distribution

Section 65, subsection 2

2. Where a performance has been recorded as stated in subsection (1)(i), it must not without the consent of the performing artist be copied or be made avail-

⁴ Section 2, subsection 2

(2) Any direct or indirect, temporary or permanent reproduction, in whole or in part, by any means and in any form, shall be considered as reproduction. The recording of the work on devices which can reproduce it, shall also be considered as a reproduction.

able to the public until 50 years after the end of the year in which the performance took place. However, if a recording of the performance is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication, or the first such communication, whichever is the earlier.

Section 2, subsection 3, subparagraph i (applied by a reference in Section 65(6))

3. The work is made available to the public if
 - i. copies of the work are offered for sale, rental or lending or distribution to the public in some other manner

4.3. Right of Rental (and lending)

Section 65, subsection 2

2. Where a performance has been recorded as stated in subsection (1)(i), it must not without the consent of the performing artist be copied or be made available to the public until 50 years after the end of the year in which the performance took place. However, if a recording of the performance is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication, or the first such communication, whichever is the earlier.

Section 2, subsection 3, subparagraph i (applied by a reference in Section 65(6))

3. The work is made available to the public if
 - i. copies of the work are offered for sale, rental or lending or distribution to the public in some other manner

4.4. Right of Making Available to the Public of Fixed Performances

Section 65, subsection 2

2. Where a performance has been recorded as stated in subsection (1)(i), it must not without the consent of the performing artist be copied or be made available to the public until 50 years after the end of the year in which the performance took place. However, if a recording of the performance is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication, or the first such communication, whichever is the earlier.

4.5. Right of Broadcasting

Potentially part of:

Section 65, subsection 2

2. Where a performance has been recorded as stated in subsection (1)(i), it must not without the consent of the performing artist be copied or be made available to the public until 50 years after the end of the year in which the performance took place. However, if a recording of the performance is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication, or the first such communication, whichever is the earlier.

Section 2, subsections 3(iii), 4(i) (applied by a reference in Section 65(6))

3. The work is made available to the public if
 - iii. the work is performed in public.
4. Public performance within the meaning of subsection (3)(iii) shall include
 - i. communication to the public of works, by wire or wireless means, including broadcasting by radio or television and the making available to the public of works in such a way that members of the public may access them from a place and at a time individually chosen by them

4.6. Right of Communication to the Public

Potentially part of:

Section 65, subsection 2

2. Where a performance has been recorded as stated in subsection (1)(i), it must not without the consent of the performing artist be copied or be made available to the public until 50 years after the end of the year in which the performance took place. However, if a recording of the performance is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication, or the first such communication, whichever is the earlier.

Section 2, subsections 3(iii) and 4(i) (applied by a reference in Section 65(6)):

3. The work is made available to the public if
 - iii. the work is performed in public.
4. Public performance within the meaning of subsection (3)(iii) shall include
 - i. communication to the public of works, by wire or wireless means, including broadcasting by radio or television and the making available to the public

of works in such a way that members of the public may access them from a place and at a time individually chosen by them

4.7. Right of Public Performance

Section 65, subsection 2

2. Where a performance has been recorded as stated in subsection (1)(i), it must not without the consent of the performing artist be copied or be made available to the public until 50 years after the end of the year in which the performance took place. However, if a recording of the performance is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication, or the first such communication, whichever is the earlier.

Section 2, subsection 3, subparagraph iii (applied by a reference in Section 65(6))

3. The work is made available to the public if
 - iii. the work is performed in public.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Provisions on Unassignable Claims for Remuneration in Connection with Rental of Moving Pictures and Sound Recordings

Section 58a (applied by a reference in Section 65(6))

If an author has assigned his right to make a work available to the public through rental to a producer of moving pictures or sound recordings, the author shall be entitled to an equitable remuneration from the producer for the rental. The right to remuneration may be exercised only through organisations which represent the individual groups of rightholders. The provisions of the first and second sentence may not be deviated from by agreement.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision.

5.3. Any Other Right to Remuneration

Remuneration for reproduction for private use

Section 39, subsections 1, 2 (applied by a reference in Section 65(6))

1. Anyone who for commercial purposes produces or imports sound tapes or videotapes or other devices on to which sound or images can be recorded shall pay remuneration to the authors of the works mentioned in subsection (2).
2. The remuneration shall be paid for tapes, etc., which are suitable for production of copies for private use, and only for works which have been broadcast on radio or television, or which have been published on phonogram, film, videogram, etc.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 65, subsection 5

5. An agreement between a performing artist and a film producer to take part in the recording of a film implies that in the absence of any opposite agreement the performing artist is assumed to have assigned his right to the rental of the film to the producer.

6.2. Any Other Presumption

No other presumptions.

7. Transfer of Rights

Exhaustion

Section 19, subsections 1, 2 (applied by a reference in Section 65(6))

1. Where a copy of a work has been sold or otherwise transferred to others within the European Economic Area with the consent of the author the copy may be further distributed. In respect of further distribution in the form of lending or rental, the provision of subsection (1) shall also apply to sale or assignment in any other form to other persons outside the European Economic Area.
2. Notwithstanding the provision of subsection (1), copies may not be distributed to the general public through rental without the consent of the author. - -

Assignment of copyright: General provisions

Section 53 (applied by a reference in Section 65(6))

1. Subject to the limitations following from sections 3 and 38 the copyright holder may wholly or partially assign his rights under this Act.
2. The transfer of copies shall not include an assignment of the copyright.
3. Where a right to exploit the work in a specific manner or through specific means has been assigned, the assignment does not give the assignee the right to exploit the work in any other manners or through any other means.
4. The provisions of sections 54–59 on assignment of copyright may be deviated from by agreement between the parties except where otherwise provided in the individual provisions.

Section 54 (applied by a reference in Section 65(6))

1. The assignee shall be under an obligation to exploit the assigned rights. The author may cancel the agreement with 6 months notice, if the assignee has not exploited the rights within 3 years after the time where the agreement has been fulfilled on the part of the author. This does not apply when the exploitation is initiated before the expiration of the notice.
2. The provisions of subsection (1) cannot be derogated from, unless it is a mere change of the outlined time limits.

Alterations and Reassignment

Section 56⁵ (applied by a reference in Section 65(6))

1. Assignment of copyright does not give the assignee any right to alter the work unless the alteration is usual or obviously presumed.
2. Assignment of copyright does not give the assignee any right to reassign copyright unless the reassignment is usual or obviously presumed. The assignor remains liable for the performance of the agreement with the author.

8. Additional Information

8.1. Applicability

Section 86, subsection 1

The provisions concerning the rights of performing artists (Section 65) apply to performances which have taken place in a country within the EEA. Notwithstanding this provision, the provisions of Section 65, subsection 2, on the distribution of copies to the public apply to all performances.

⁵ The provisions of this section may be deviated from by agreement between the parties (Section 53, subsection 4).

Section 91, subsection 2

The provision of Section 65(5) on the presumption concerning the transfer of right of rental applies also to agreements made before July 1, 1995.

8.2. Limitations

Limitations on Copyright and Management of Rights in the event of Extended Collective License (applied by a reference in Section 65(6))

Section 11a: Temporary reproduction

Section 12, subsection 1, 2(v), 3, 4(i) and 5 first sentence: Reproduction for private use

Section 13: Reproduction within educational activities

Section 15: Reproduction by hospitals, etc.

Sections 16 and 16a: Archives, libraries and museums

Section 17, subsection 1, 2 and 4: Visually- and hearing-handicapped persons

Section 22: Quotations

Sections 25 and 25a: Reporting of current events etc.

Sections 27 and 28: Public proceedings, public access, etc.

Section 30a: Special provisions on radio and television ("Works which are a part of DR, TV 2/DANMARK A/S and the regional TV 2 companies' own productions" -> On demand ECL, for productions broadcast before January 1, 2007)

Section 31: Reproductions by broadcasters

Section 34: Delivering recordings of broadcasts to persons who took part or were offended by comment in a specific broadcast

Section 35: Retransmission of wireless broadcasts

Sections 50–52: Common provisions on extended collective license

8.3. Other Possible Specificities

Settlement and Control

Section 57 (applied by a reference in Section 65(6))

1. If the author's remuneration depends on the assignee's turnover, sales figures, etc., the author may demand that settlement is made at least once a year. The author may likewise demand that the settlement be accompanied by satisfactory information on the circumstances forming the basis of the calculation of the remuneration.
2. The author may demand that the accounts, bookkeeping and inventory together with certifications by the party who has exploited the work in connection with the annual settlement according to subsection (1) be made available to a state-authorized public accountant or registered accountant appointed

by the author. The accountant shall inform the author of the correctness of the settlement and of irregularities, if any. The accountant shall otherwise observe secrecy about all other matters that become known to him in connection with his review.

3. The provisions of subsections (1) and (2) shall not be deviated from to the detriment of the author.

Inheritance

Section 61 (applied by a reference in Section 65(6))

1. The usual provisions of the inheritance laws shall apply to the copyright upon the author's death.
2. The author may give directions in his will with binding effect also for the spouse and issue concerning the exercise of the copyright, or may authorise somebody else to give such directions.

Creditor Proceedings

Section 62 (applied by a reference in Section 65(6))

1. The author's right to control his work shall not be subject to creditor proceedings, either when remaining with the author or when with any person who has acquired the copyright by virtue of marriage or inheritance.
2. Copies of the work shall not be subject to creditor proceedings either when remaining with the author or when with any person to whom copies have been assigned by virtue of marriage or inheritance if the proceedings are in respect of
 - i. manuscripts;
 - ii. bases, plates, forms, etc., by which a work of art can be performed; or
 - iii. copies of works of art which have not yet been exhibited, offered for sale or in any other way approved for publication.

Other provisions

Section 7: Copyright Holder Presumption, etc. (applied by a reference in Section 65(6))

1. If not otherwise stated the person whose name or generally known pseudonym or signature is indicated in the usual manner on copies of the work, or where the work is made available to the public, shall be deemed to be the author.
2. If a work is published without the author being indicated in accordance with subsection (1), the editor, if named, and otherwise the publisher, shall act on behalf of the author until the latter is named in a new edition of the work.

Section 11 (applied by a reference in Section 65(6))

1. The provisions of this chapter (= Ch. 2) and chapter 6 b do not limit the author's rights under section 3, except as provided in section 29.

2. Where a work is used in accordance with the provisions of this chapter and chapter 6 b, the work may not be altered more extensively than is required for the permitted use. If the work is used publicly, the source shall be indicated in accordance with the requirements of proper usage.
3. Where a work is used in accordance with the provisions of this chapter and chapter 6 b, copies may not be made on the basis of a reproduction of the work which is contrary to section 2 or on the basis of circumvention of a technical device which is contrary to section 75 c(1). The provision in the first sentence does not apply to the production of copies pursuant to section 16 (5).

Finland

Copyright Act (404/1961)
Amendments up to 608/2015

Elements

1. Framework Provisions

1.1. Definitions

- No definitions relevant for audiovisual performances in the Finnish Copyright Act (FCA)

1.2. National Treatment

*Section 64, subsection 1: Criterion of the place of performance and criterion of fixation
Decree (575/1995): Section 2, subsections 1, 2: Extends these to the EEA countries*

2. Moral Rights

2.1. Paternity Right

Section 3, subsection 1,3 (applied by a reference in Section 45(7))

2.2. Integrity Right

Section 3, subsection 2,3 (applied by a reference in Section 45(7))

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 45, subsection 1, subparagraph 1

3.2. Broadcasting and Communication to the Public

Section 45, subsection 1, subparagraph 2: "...on radio or television or by direct communication"

- Nb. Broadcasting means in this provision both broadcasting and the "transmission by any medium, otherwise than broadcasting"
- Nb. "direct communication" means in this provision public performance transferred and performed to an audience situated outside the place of the performance

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 45, subsection 3, subparagraph 1

4.2. Right of Distribution

Section 45, subsection 3, subparagraph 3

4.3. Right of Rental (and lending)

Section 45, subsection 3, subparagraph 3: Rental and lending are parts of the right of distribution

4.4. Right of Making Available to the Public of Fixed Performances

Section 45, subsection 3, subparagraph 2

4.5. Right of Broadcasting

- No such right.

4.6. Right of Communication to the Public

- No such right.

4.7. Right of Public Performance

- No such right.

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 29a

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- No such right for performers of audiovisual performances.

5.3. Any Other Right to Remuneration

- No other rights to remuneration.

- Nb. Section 45(7), reference to sections 26a and 26b: fair compensation has to be paid also to the performers; the performers have no subjective right to claim fair compensation

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 45, subsection 6

6.2. Any Other Presumption

- No other presumptions.

7. Transfer of Rights

General provisions governing transfer of copyright

Section 27, subsections 1, 2 (applied by a reference in Section 45(7))

Section 28 (applied by a reference in Section 45(7))

Section 29 (applied by a reference in Section 45(7))

Transfer of copyright upon the author's death and the foreclosure of copyright

Section 41 (applied by a reference in Section 45(7))

Section 42 (applied by a reference in Section 45(7))

8 Additional Information (if available)

8.1. Applicability

8.2. Limitations

- Limitations to copyright are applied by a reference in Section 45(7)

8.3. Other Possible Specificities

Provisions of the Copyright Act (404/1961), Finland

1. Framework Provisions

1.1. Definitions

- No definitions relevant for audiovisual performances in the Finnish Copyright Act

1.2. National Treatment

Territorial application of rights related to copyright

Section 64, subsection 1 and 2

1. The provisions of section 45 above shall apply if:
 - 1) the performance takes place in Finland;
 - 2) the performance has been recorded on a device referred to in subsection 2; or
 - 3) the performance, which has not been recorded on a phonogram, is included in a transmission referred to in subsection 6.
2. The provisions of section 46 above shall apply to a device:
 - 1) the producer of which is a Finnish national or a Finnish company, or the producer of which has his habitual residence or office in Finland;
 - 2) the sound of which has been recorded in Finland. (607/2015)

Decree 575/1995: Section 2

1. Section 45 of the Copyright Act shall be applied:
 - 1) to a performance which takes place in a State belonging to the European Economic Area;
 - 2) to a performance which is recorded on a device, as defined in section 3; and
 - 3) to a performance, which has not been recorded on a phonogram but which is included in a transmission, as defined in section 5.
2. Whatever is provided in subsection 1 shall not be applied to the retransmission of a broadcast performance.

2. Moral Rights

2.1. Paternity Right

Moral rights

Section 3, subsections 1, 3 (applied by a reference in Section 45(7))

1. When copies of a work are made or when the work is made available to the public in whole or in part, the name of the author shall be stated in a manner required by proper usage.
3. The right conferred to the author by this section may be waived by him with binding effect only in regard of use limited in character and extent.

2.2. Integrity Right

Moral rights

Section 3, subsections 2, 3 (applied by a reference in Section 45(7))

2. A work may not be altered in a manner which is prejudicial to the author's literary or artistic reputation, or to his individuality; nor may it be made available to the public in such a form or context as to prejudice the author in the manner stated.
3. The right conferred to the author by this section may be waived by him with binding effect only in regard of use limited in character and extent.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Performing artist

Section 45, subsection 1, subparagraph 1

1. Without the performing artist's consent, a performance of a literary or artistic work or folklore shall not:
 - 1) be recorded on a device by means of which the performance can be reproduced;

3.2. Broadcasting and Communication to the Public

Performing artist

Section 45, subsection 1, subparagraph 2

3. Without the performing artist's consent, a performance of a literary or artistic work or folklore shall not:
 - 3) be made available to the public on radio or television or by direct communication.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Performing artist

Section 45, subsection 3, subparagraph 1

3. A performance referred to in subsection 1 which has been recorded on a device referred to in section 46a shall not, without the performing artist's consent, until 50 years have elapsed from the year in which the performance took place:
 - 4) be transferred to a device by means of which it can be reproduced;

4.2. Right of Distribution

Performing artist

Section 45, subsection 3, subparagraph 3

3. A performance referred to in subsection 1 which has been recorded on a device referred to in section 46a shall not, without the performing artist's consent, until 50 years have elapsed from the year in which the performance took place:
 - 3) be distributed to the public.

4.3. Right of Rental (and lending)

Performing artist

Section 45, subsection 3, subparagraph 3

3. A performance referred to in subsection 1 which has been recorded on a device referred to in section 46a shall not, without the performing artist's consent, until 50 years have elapsed from the year in which the performance took place:
 - 3) be distributed to the public.

4.4. Right of Making Available to the Public of Fixed Performances

Performing artist

Section 45, subsection 3, subparagraph 2

3. A performance referred to in subsection 1 which has been recorded on a device referred to in section 46a shall not, without the performing artist's consent, until 50 years have elapsed from the year in which the performance took place:
 - 2) be communicated to the public in a manner which enables members of the public to access the work from a place and at a time individually chosen by them;

4.5. Right of Broadcasting

No such right.

4.6. Right of Communication to the Public

No such right.

4.7. Right of Public Performance

No such right.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Right to remuneration for rental of a copy of a film or a sound recording

Section 29a (967/1997) (applied by a reference in Section 45(7))

An author who has transferred to the producer of a film or a sound recording the right to distribute a sound recording or a film by rental shall be entitled to receive an equitable remuneration for the rental from the producer. The author may not waive his right to remuneration.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such right.

5.3. Any Other Right to Remuneration

No other rights to remuneration.

- Nb. Section 45(7), reference to sections 26a and 26b: fair compensation has to be paid also to the performers; the performers have no subjective right to claim fair compensation

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Performing artist

Section 45, subsection 6

6. The transfer of the right to film the performance covers the right to distribute the recorded performance to the public by renting where not otherwise agreed.

6.2. Any Other Presumption

No other presumptions.

7. Transfer of Rights (applied by a reference in Section 45(7))

General provisions governing transfer of copyright

Section 27 (404/1961)

1. Copyright may be transferred entirely or partially, subject to the limitations of section 3.
2. The transfer of a copy shall not include the transfer of copyright. In the case of a commissioned portrait, the author may not, however, exercise his right without the consent of the person who commissioned it or, after his death, the surviving spouse and heirs.

Section 28 (404/1961)

Unless otherwise agreed, the person to whom a copyright has been transferred may not alter the work or transfer the copyright to others. When copyright is held by a business, it may be transferred in conjunction with the business or a part thereof; however, the transferor shall remain liable for the fulfilment of the agreement.

Section 29 (960/1982)

The adjustment of an unreasonable condition in an agreement on a transfer of copyright shall be governed by the provisions of the Contracts Act (228/29).

Transfer of copyright upon the author's death and the foreclosure of copyright

Section 41 (404/1961)

1. After the author's death, copyright shall be governed by provisions pertaining to marital right to property, inheritance and will.
2. The author may give directions in his will for the exercise of copyright, with binding effect also on the surviving spouse and direct descendants, adopted children and their descendants, or authorise someone else to give such directions.

Section 42 (404/1961)

Copyright shall not be subject to foreclosure as long as the copyright remains with the author or with a person to whom the copyright has been transferred by virtue of marital right

to property, inheritance or will. The same shall apply to manuscripts and works of art which have not been exhibited, offered for sale, or otherwise authorised for being made public.

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

(applied by a reference in Section 45(7))

Section 11: General provisions

Section 11a: Temporary reproduction

Section 12: Reproduction for private use

Section 13a: Use for internal communication

Section 14: Use of works for educational activities and scientific research

Section 15: Reproduction in certain institutions

Section 16: Reproduction in archives, libraries and museums

Section 16a: Reproduction of works for the public and communication of works to the public

Section 16b: Use of works in libraries preserving cultural material

Section 16c: Use of works in the National Audiovisual Institute

Section 16d: Use of works in archives, libraries and museums by virtue of extended collective licence

Section 16e: Further provisions concerning the use of works in archives, libraries and museums

Section 17: Making works available to persons with disabilities

Section 19: Distribution of copies of a work and right to remuneration for lending

Section 21: Public performance

Section 22: Quotation

Section 25b: Inclusion of a work in a news broadcast

Section 25c: Use of public statements

Section 22: Public documents and administration of justice

Section 25f: Original radio and television transmissions

Section 25g: A reuse of a television programme or a newspaper or periodical stored in archives

Section 25f: Original radio and television transmissions

Section 25h: Retransmission of a radio or television transmission

Section 25i: Retransmission of programmes based on the must carry obligation to transmit programmes

Section 25l: Online recording service of television programmes

Sections 26: Extended collective licence

8.3. Other Possible Specificities

Iceland

Copyright Act 73/1972⁶

Elements

1. Framework Provisions

- 1.1. Definitions
- 1.2. National Treatment

2. Moral Rights

- 2.1 Paternity Right
 - Section 4 subsections 1, 3 (applied by a reference in Section 45, subsection 3)*
- 2.2 Integrity right
 - Section 4 subsections 2, 3 (applied by a reference in Section 45, subsection 3)*

3. Live Performances – Exclusive Rights

- 3.1. Right of Fixation
 - Section 45, subsection 1, subparagraph 1*
- 3.2. Broadcasting and Communication to the Public
 - Section 45, subsection 1, subparagraphs 2, 3*

4. Fixed Performances – Exclusive Rights

- 4.1. Right of Reproduction
 - Section 45, subsection 1, subparagraph 4*
- 4.2. Right of Distribution
 - Section 45, subsection 1, first sentence*
- 4.3. Right of Rental (and lending)
 - Section 24, subsections 2, 3 (applied by a reference in Section 45(3))*
- 4.4. Right of Making Available to the Public of Fixed Performances
 - No such provision.
- 4.5. Right of Broadcasting
 - No such provision.
- 4.6. Right of Communication to the Public
 - No such provision.

⁶ With subsequent amendments, latest of 21 April, 2010.

4.7. Right of Public Performance

- No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 41 (Act 60/2000), subsection 3 (applied by a reference in Section 45 (3))

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- No such provision.

5.3. Any Other Right to Remuneration

- No other rights to remuneration.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 45, subsection 2

6.2. Any Other Presumption

- No other presumptions.

7. Transfer of Rights

Exhaustion

Section 24 (Act 9/2006) (applied by a reference in Section 45(3))

General provisions

Section 27 (applied by a reference in Section 45 (3))

Section 28 (applied by a reference in Section 45 (3))

Section 45, subsection 4

8. Additional Information (if available)

8.1. Applicability

Section 61, subsection 1

8.2. Limitations

Reproductions for private use

Section 11, subsection 1

Public archives, public libraries, university libraries etc.

Section 12 and 12a

Quotation

Section 14, subsection 1

Newsworthy events

Section 15, subsection 3

8.3. Other Possible Specificities

Marriage settlements and legal execution measures

Section 30, subsections 1, 2 (applied by a reference in Section 45 (3))

Inheritance

Section 31 (applied by a reference in Section 45 (3))

Joint ownership of rights

Section 7 (applied by a reference in Section 45 (3))

Right holder presumption

Section 8 (applied by a reference in Section 45 (3))

Section 26 (applied by a reference in Section 45 (3))

Provisions of Copyright Act 73/1972, Iceland

1. Framework Provisions

1.1. Definitions

1.2. National Treatment

2. Moral Rights

2.1. Paternity Right

Section 4, subsections 1, 3 (applied by a reference in Section 45, subsection 3)

1. Wherever practicable, the name of the author must be indicated both on copies of the work and whenever it is presented.
3. The right of the author as provided for in this Article may not be waived, except for specified instances which are clearly defined.

2.2. Paternity Right

Section 4, subsections 2, 3 (applied by a reference in Section 45, subsection 3)

2. An author's work may not be altered or presented in such a manner or in such a context as would prejudice the author's reputation or the individual character of the work.
3. The right of the author as provided for in this Article may not be waived, except for specified instances which are clearly defined.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 45, subsection 1, subparagraph 1

1. A performer shall have exclusive right to produce copies of his performance and to all distribution of such to the public, subject to the provisions of Article 47. The actions listed below, for instance, are accordingly prohibited without his consent:
 - 1) the recording for re-presentation of a live performance; A live performance means one performed in person by a performer, and includes a broadcast performance. If a broadcasting organisation has made a temporary recording of a performance in person, the broadcasting of that performance is subject to the same provisions as a live performance

3.2. Broadcasting and Communication to the Public

Section 45, subsection 1, subparagraphs 2, 3

1. A performer shall have exclusive right to produce copies of his performance and to all distribution of such to the public, subject to the provisions of Article 47. The actions listed below, for instance, are accordingly prohibited without his consent:
 - 2) the broadcast of a live performance;
 - 3) the communication of a live performance by technical means, either by cable or wireless, from the place of performance to other specified locations to which the public has access;

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 45, subsection 1, subparagraph 4

1. A performer shall have exclusive right to produce copies of his performance and to all distribution of such to the public, subject to the provisions of Article 47. The actions listed below, for instance, are accordingly prohibited without his consent:
 - 4) the reproduction of a recording of a performance and its distribution to the public until 50 years have elapsed from the end of the year of the performance. Should the recording of the performance be distributed to the public within the prescribed period of protection the protection shall extend for 50 years from the end of the year of its first distribution.

4.2. Right of Distribution

Section 45, subsection 1, first sentence

1. A performer shall have exclusive right to produce copies of his performance and to all distribution of such to the public, subject to the provisions of Article 47.

4.3. Right of Rental (and lending)

Section 24 (Act 9/2006) subsections 2 and 3 (applied by a reference in Section 45, subsection 3)

2. Notwithstanding the provisions of the first paragraph of this Article, copies of works may not be distributed to the public by means of rental unless the author's consent has been obtained. This shall not apply, however, to works of architecture or sculpture.
3. Notwithstanding the provisions of the first paragraph of this Article, it shall not be permitted, without the consent of the author, to distribute copies of films

and computer programs in digital form to the public by lending them. This shall not apply, however when a copy of a computer program in digital form constitutes part of a work of literature and is lent together with it.

4.4. Right of Making Available to the Public of Fixed Performances

No such provision.

4.5. Right of Broadcasting

No such provision.

4.6. Right of Communication to the Public

No such provision.

4.7. Right of Public Performance

No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Contracts for cinematographic works

Section 41, subsection 3 (Act 60/2000) (applied by a reference in Section 45, subsection 3)

3. If the author of a cinematographic work has transferred his right to the rental of a cinematographic work, cf. the first paragraph, he shall always be entitled to reasonable remuneration for the rental; such right may not be waived by contract.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision.

5.3. Any Other Right to Remuneration

No other rights to remuneration.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 45, subsection 2

2. Should a performer have contracted to contribute to a cinematographic work he may not, unless rights have been otherwise reserved, prevent the rental of copies of the cinematographic work.

6.2. Any Other Presumption

No other presumptions.

7. Transfer of Rights

Exhaustion

Section 24 (Act 9/2006) (applied by a reference in Section 45, subsection 3)

1. If a copy of a work has been sold or assigned in another manner to other parties within the European Economic Area with the consent of the author, then further distribution of it shall be permitted. In the case of distribution in the form of lending or rental, the provision of the first sentence of this paragraph shall also apply to its sale or assignment by another manner to other parties outside the European Economic Area.
2. Notwithstanding the provisions of the first paragraph of this Article, copies of works may not be distributed to the public by means of rental unless the author's consent has been obtained. This shall not apply, however, to works of architecture or sculpture.
3. Notwithstanding the provisions of the first paragraph of this Article, it shall not be permitted, without the consent of the author, to distribute copies of films and computer programs in digital form to the public by lending them. This shall not apply, however when a copy of a computer program in digital form constitutes part of a work of literature and is lent together with it.
4. The provisions of the first paragraph of this Article shall not abridge the right to receive allocations under the Authors' Library Fund Act.

General provisions

Section 27 (applied by a reference in Section 45(3))

1. Subject to the limitations of Article 4, an author may assign, in whole or in part, his copyright to a work.
2. Though a copy of a work has been delivered to an owner, such action does not constitute the assignment of copyright to the work, unless such is stated expressly.

Section 28 (applied by a reference in Section 45, subsection 3)

1. Unless expressly agreed, an assignment of copyright does not entitle the assignee to alter the work.
2. An assignee may not assign his copyright to a third party without the consent of the author. If the copyright is among the assets of a business enterprise it may, however, be assigned along with the business or a certain part of it. Notwithstanding such assignment, the assignor remains responsible for the fulfilment of his obligations towards the author.

Section 45, subsection 4

If more than twelve performers are involved in a performance the permission of a professional organisation of performers for its reproduction and reuse is sufficient, provided that payment is made for such performance.

8. Additional Information

8.1. Applicability

Section 61, subsection 1

The provisions of Article 45 shall apply to:

1. artistic performances by persons who are citizens of, or are resident in, a Member State of the European Economic Area;
2. artistic performances by other foreign nationals and stateless persons, as follows:
 - a. if the performance took place in Iceland,
 - b. if the performance was recorded on an audio recording which enjoys protection in accordance with item 2 of the third paragraph,
 - c. if a performance, which was not recorded on an audio recording, is broadcast by a broadcasting institution which enjoys protection in accordance with the of provisions of the fourth paragraph.

8.2. Limitations⁷

Section 11, subsection 1: Reproductions for private use

Section 12 and 12a: Public archives, public libraries, university libraries etc.

Section 14, subsection 1: Quotation

Section 15, subsection 3: Newsworthy events

8.3. Other Possible Specificities

Marriage settlements and legal execution measures

Section 30, subsections 1, 2 (applied by a reference in Section 45(3))

1. Should an author be married the copyright shall be his personal property and cannot be restricted by a marriage settlement or other means, including the dissolution of the marital estate during the author's lifetime. Copyright royalties and revenue from assignment of copyright are the joint property of the couple, unless otherwise provided for in a marriage settlement. Upon the death of the author the copyright shall constitute part of his marital estate, unless otherwise provided for in a marriage settlement, cf. also the second paragraph of Article 31.
2. Copyright shall not be subject to legal execution by creditors, whether in possession of the author himself or others who have acquired the right by virtue of inheritance or marriage. Should a person have acquired copyright by assignment, only his right to re-assign the copyright may be subject to legal execution measures, cf. the provisions of the second paragraph of Article 28.

Inheritance

Section 31 (applied by a reference in Section 45(3))

1. General legal provisions regarding inheritance shall apply to copyright on the death of an author, cf. also the provisions of Article 30.
2. An author may make special provision in his will concerning the exercise of copyright after his death and may, for instance, assign its exercise to a special executor. Such provision shall be binding on all his heirs, including his legal heirs, and also with regard to that portion of the estate falling to his spouse.
3. The provisions of the second paragraph shall also apply to such works as are referred to in the third paragraph of Article 30.

⁷ Applied by a reference in Section 45, subsection 3.

Other provisions

Joint ownership of rights

Section 7 (applied by a reference in Section 45(3))

Should a single work have two or more authors, whose individual contributions cannot be separated into independent works, they shall hold joint copyright in the work.

Right holder presumption

Section 8 (applied by a reference in Section 45(3))

1. Until proved otherwise, the person whose name is indicated in the usual manner on copies of a work, or is declared to be the author, shall be considered the author of the work when the work is presented. This shall also apply to authors who use pseudonyms or identifying marks, when it is generally known to whom they refer. The foregoing provisions shall also apply to a producer of a cinematographic work. In addition, in cases where major or continuous performance of works or extensive reproduction or rental has taken place, it shall be assumed that the works performed, rented or reproduced are protected by copyright laws unless evidence be produced to the contrary.
2. Should a work be published without indication of the name of the author as referred to in the first paragraph, the publisher shall act on his behalf until such time as his name is indicated in a new publication or by notification to the Minister of Education, Science and Culture.

Section 26 (applied by a reference in Section 45(3))

1. The provisions of this Chapter (=Ch. II Limitations to copyright), with the exception of Article 13, shall not prejudice the rights of an author in accordance with Article 4.
2. When a work is publicly presented in accordance with the provisions of this Chapter, mention shall be made of the source used as well as the author, as appropriate under the circumstances.
3. When copies or a work are made in accordance with the provisions of this Chapter, the work may not be altered more extensively than is required for the purposes of reproduction without the consent of the author.

Norway

act 1961:2 relating to Copyright in Literary, Scientific and Artistic Works etc.⁸

Elements

1. Framework Provisions

- 1.1. Definitions
- 1.2. National Treatment

2. Moral Rights

- 2.1 Paternity Right
 - Section 3, subsections 1, 3, 4 (applied by a reference in Section 42(5))*
- 2.2 Integrity Right
 - Section 3, subsections 2, 3, 4 (applied by a reference in Section 42(5))*

3. Live Performances – Exclusive Rights

- 3.1. Right of Fixation
 - Section 42, subsection 1, subparagraph a (Act 2014:22)*
- 3.2. Broadcasting and Communication to the Public
 - Section 42, subsection 1, subparagraph c (Act 2014:22)*
 - Section 2, subsections 3(c), 4 (applied by a reference in Section 42(5))*

4. Fixed Performances – Exclusive Rights

- 4.1. Right of Reproduction
 - Section 42, subsection 1, subparagraph b*
- 4.2. Right of Distribution
 - Section 42, subsection 1, subparagraph c (Act 2014:884)*
 - Section 2, subsection 3, subparagraph a (applied by a reference in Section 42(5))*
- 4.3. Right of Rental (and lending)
 - Section 42, subsection 1, subparagraph c (Act 2014:22)*
 - Section 2, subsection 3, subparagraph a (applied by a reference in Section 42(5))*
- 4.4. Right of Making Available to the Public of Fixed Performances
 - Section 42, subsection 1, subparagraph c (Act 2014:22)*
- 4.5. Right of Broadcasting

⁸ With subsequent amendments, latest of 19 June, 2015. Unofficial translation November 2008.

Section 42, subsection 1, subparagraph c

Section 2, subsections 3(c) and 4 (applied by a reference in Section 42(5))

4.6. Right of Communication to the Public

Section 42, subsection 1, subparagraph c

Section 2, subsections 3(c) and 4 (applied by a reference in Section 42(5))

4.7. Right of Public Performance

Section 42, subsection, subparagraph c (Act 2014:22)

Section 2, subsections 3(c) and 4 (applied by a reference in Section 42(5))

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 39m (Act 1998:4) (applied by a reference in Section 42(5))

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- No such provision.

5.3. Any Other Right to Remuneration

Section 12, subsection 1 (applied by a reference in Section 42 (5)) (Act 2005:97): Right to remuneration for private copying

Compulsory licence for the use of works for educational use

Section 13a (Act 2005:97) (applied by a reference in Section 42(5))

Collective works for use in education, etc.

Section 18 (Act 2005:97) (applied by a reference in Section 42(5))

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 42, subsection 4 (Act 2014:22)

6.2. Any Other Presumption

Section 39b (Act 1995:27) (applied by a reference in Section 42(5)): Assignment of copyright shall not confer a right to alter the work unless otherwise agreed

7. Transfer of Rights

Transfer of copyright: General provisions:

Section 39 (Act 1995:27) (applied by a reference in Section 42(5))

Section 39a (Act 1995:27) (applied by a reference in Section 42(5))

Section 42, subsection 3 (Act 2014:22)

8. Additional Information (if available)

8.1. Applicability

Section 58, subsections 1, 2 (first and second sentence)

8.2. Limitations

Limitations and the management of rights by extended collective license (Act 2005:97) (applied by a reference in Section 42(5))

Making copies for private use

Section 12

Compulsory license for the use of works for educational use

Section 13a

Extended collective license for the use of works in educational activities

Section 13b

Fixations made in health institutions, etc.

Section 15

Making copies in archives, libraries and museums, etc.

Section 16

Extended collective license for the use of works in archives, libraries and museums

Section 16a

Making copies for use by the disabled

Section 17

Extended collective license for the production and use of fixations for the disabled

Section 17b

Collective works for use in education, etc.

Section 18

Quotation

Section 22

News report in a broadcast or film

Section 25

Fixations of works for use in broadcasts

Section 31

Extended collective license for the use of works in the broadcasting organizations' collections

Section 32

Retransmission

Section 34

Common provisions regarding compulsory licenses, extended collective licenses, commissions, etc.

Sections 35–38b

8.3. Other Possible Specificities

Checking accounts

Section 39c (Act 1995:27) (applied by a reference in Section 42(5))

Inheritance

Section 39k (Act 2005:97) (applied by a reference in Section 42(5))

Creditor prosecution

Section 39I Act 1995:83) (applied by a reference in Section 42(5))

Arrangements relating to property made between married couples

Section 50 (applied by a reference in Section 42(5))

Joint ownership of rights

Section 6 (applied by a reference in Section 42(5))

Right holder presumption

Section 7 (applied by a reference in Section 42(5))

Section 11 (applied by a reference in Section 42(5))

Provisions of the Act 1961:2 relating to Copyright in Literary, Scientific and Artistic Works etc, Norway

1. Framework Provisions

1.1. Definitions

1.2. National Treatment

2. Moral Rights

2.1. Paternity Right

Section 3, subsections 1, 3, 4 (applied by a reference in Section 42(5))

1. Both when copies of a literary, scientific or artistic work are produced, and when it is made available to the public, the author is entitled to have his name stated in the manner required by proper usage.
3. The author may not waive his rights under the first and second paragraphs, unless the use of the work in question is limited in nature and extent.
4. If the work is made available to the public in such prejudicial form as is stated in the second paragraph, the author, even if he has given valid consent to the use of the work, shall have the right to demand either that he is not to be named as the author, or that it is stated in a satisfactory manner that the alterations made do not derive from him. This right may not be waived by the author.

2.2. Integrity Right

Section 3, subsections 2, 3, 4 (applied by a reference in Section 42(5))

2. If another person has the right to alter a literary, scientific or artistic work or to make it available to the public, this must not be done in a manner or in a context prejudicial to the author's literary, scientific or artistic reputation or to his individuality, or prejudicial to the reputation or individuality of the work itself.
3. The author may not waive his rights under the first and second paragraphs, unless the use of the work in question is limited in nature and extent.
4. If the work is made available to the public in such prejudicial form as is stated in the second paragraph, the author, even if he has given valid consent to the use of the work, shall have the right to demand either that he is not to be named as

the author, or that it is stated in a satisfactory manner that the alterations made do not derive from him. This right may not be waived by the author.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 42, subsection 1, subparagraph a (Act 2014:22)

1. Subject to the limitations laid down in this Act, a performing artist has the exclusive right to dispose of his performance of a work by
 - a. making temporary or permanent fixations of the performance

3.2. Broadcasting and Communication to the Public

Section 42, subsection 1, subparagraph c (Act 2014:22)

1. Subject to the limitations laid down in this Act, a performing artist has the exclusive right to dispose of his performance of a work by
 - c. making the performance or a fixation of the performance available to the public. For the public performance of sound fixations the provisions in section 45b nonetheless apply, unless the performance is done in such a way that the individual can choose the time and place of access to the fixation.

Section 2

subsections 3(c), 4 (applied by a reference in Section 42(5))

3. The work is made available to the public when
 - c. the work is performed publicly.
4. As public performance is also included broadcasting or other transmission by wire or wireless means to the public, hereunder when the work is made available in such a way that the individual can choose the time and place of access to the work.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 42, subsection 1, subparagraph b

1. Subject to the limitations laid down in this Act, a performing artist has the exclusive right to dispose of his performance of a work by
 - b. producing permanent or temporary copies of a fixation of the performance

4.2. Right of Distribution

Section 42, subsection 1, subparagraph c (Act 2014:22)

1. Subject to the limitations laid down in this Act, a performing artist has the exclusive right to dispose of his performance of a work by
 - c. making the performance or a fixation of the performance available to the public. For the public performance of sound fixations the provisions in section 45b nonetheless apply, unless the performance is done in such a way that the individual can choose the time and place of access to the fixation.

Section 2, subsection 3, subparagraph a (applied by a reference in Section 42(5))

3. The work is made available to the public when
 - a. copies of the work are offered for sale, rental or lending, or otherwise distributed to the public

4.3. Right of Rental (and lending)

Section 42, subsection 1, subparagraph c (Act 2014:22)

1. Subject to the limitations laid down in this Act, a performing artist has the exclusive right to dispose of his performance of a work by
 - c. making the performance or a fixation of the performance available to the public. For the public performance of sound fixations the provisions in section 45b nonetheless apply, unless the performance is done in such a way that the individual can choose the time and place of access to the fixation.

Section 2, subsection 3, subparagraph a (applied by a reference in Section 42(5))

3. The work is made available to the public when
 - a. copies of the work are offered for sale, rental or lending, or otherwise distributed to the public

4.4. Right of Making Available to the Public of Fixed Performances

Section 42, subsection 1, subparagraph c (Act 2014:22)

1. Subject to the limitations laid down in this Act, a performing artist has the exclusive right to dispose of his performance of a work by
 - c. making the performance or a fixation of the performance available to the public. For the public performance of sound fixations the provisions in section 45b nonetheless apply, unless the performance is done in such a way that the individual can choose the time and place of access to the fixation.

4.5. Right of Broadcasting

Section 42, subsection 1, subparagraph c (Act 2014:22)

1. Subject to the limitations laid down in this Act, a performing artist has the exclusive right to dispose of his performance of a work by
 - c. making the performance or a fixation of the performance available to the public. For the public performance of sound fixations the provisions in section 45b nonetheless apply, unless the performance is done in such a way that the individual can choose the time and place of access to the fixation.

Section 2, subsections 3(c), 4 (applied by a reference in Section 42(5))

3. The work is made available to the public when
 - c. the work is performed publicly.
4. As public performance is also included broadcasting or other transmission by wire or wireless means to the public, hereunder when the work is made available in such a way that the individual can choose the time and place of access to the work.

4.6. Right of Communication to the Public

The same provisions as under 4.5.(Right of Broadcasting)

4.7. Right of Public Performance

Section 42, subsection 1, subparagraph c (Act 2014:22)

1. Subject to the limitations laid down in this Act, a performing artist has the exclusive right to dispose of his performance of a work by
 - c. making the performance or a fixation of the performance available to the public. For the public performance of sound fixations the provisions in section 45b nonetheless apply, unless the performance is done in such a way that the individual can choose the time and place of access to the fixation.

Section 2, subsections 3(c), 4 (applied by a reference in Section 42(5))

3. The work is made available to the public when
 - c. the work is performed publicly.
4. As public performance is also included broadcasting or other transmission by wire or wireless means to the public, hereunder when the work is made available in such a way that the individual can choose the time and place of access to the work.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 39m (Act 1998:4) (applied by a reference in Section 42(5))

1. If the author has assigned to a film- or phonogram producer the right to make a film or phonogram available to the public by way of rental, the author shall retain the right to obtain an equitable remuneration from the producer. Exchanges that are carried out as an organized activity shall be considered on a par with rental.
2. No departures from the provisions of this section may be made by agreement.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision.

5.3. Any Other Right to Remuneration

Section 12, subsection 1 (Act 2005:97) (applied by a reference in Section 42(5))

1. Provided this is not done for purposes of gain, single copies of a work that has been issued may be made for private use. Such copies may not be used for other purposes. The authors shall receive fair compensation through annual grants via the State Budget. The King may issue further regulations governing the distribution of the compensation.

Compulsory license for the use of works for educational use

Section 13a (Act 2005:97) (applied by a reference in Section 42(5))

Copies of a published work may be made for use in a public examination. The originator of the work shall be entitled to remuneration.

Collective works for use in education, etc.

Section 18 (Act 2005:97) (applied by a reference in Section 42(5))

1. In a collective work, intended for use in religious services or in education, and consisting of works by a large number of authors, minor parts of literary or scientific works or musical works or short works of this kind, may be reproduced if five years have elapsed since the expiry of the year in which the particular work

was published. -- The provision does not provide the right to reproduction in machine-readable media.

2. The author is entitled to remuneration.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 42, subsection 4 (Act 2014:22)

4. Unless otherwise agreed, an agreement concerning the production of a film of the performance of a performing artist shall also include the right to rent out copies of the film.

6.2. Any Other Presumption

Section 39b (Act 1995:27) (applied by a reference in Section 42(5))

1. Assignment of copyright shall not confer a right to alter the work unless otherwise agreed.
2. Nor may any further assignment of copyright be made without consent, unless the copyright belongs to a business or to a part thereof and is assigned together therewith. The assignor shall remain liable for the fulfilment of the agreement with the author.

7. Transfer of rights

Transfer of copyright: General provisions

Section 39 (Act 1995:27) (applied by a reference in Section 42(5))

1. Subject to the limitation ensuing from section 3, the author may, wholly or partly, assign his right to dispose of a literary, scientific or artistic work.
2. Assignment of a copy shall not include assignment of the copyright or any part thereof, even if it is the original that is assigned. Assignment of copyright does not include ownership of the manuscript or any other copy that is delivered in connection with the assignment.

Section 39a (Act 1995:27) (applied by a reference in Section 42(5))

If the author has assigned the right to use the work in a specific manner or by specific means, the assignee shall not have the right to use it in another manner or by other means.

Section 42, subsection 3 (Act 2014:22)

3. When a copy of a fixation which reproduces a performing artist's performance of a work has been sold with the artist's consent within the European Economic Area, the copy may be further distributed by means other than by rental. The same shall apply when the artist has within the said area assigned a copy of an issued sound fixation or a film which reproduces such a performance.

8. Additional information

8.1. Applicability

Section 58, subsections 1, 2 (first and second sentence)

1. The provisions of chapter 5, except for sections 43, 43a and 44 and the right of distribution referred to in sections 42 and 45, shall apply for the benefit of works created by
 - a. a Norwegian national or a person who is resident in the realm,
 - b. a company which has a Norwegian board of directors and whose registered office is in the realm.
2. The provisions of sections 42 and 45a shall, moreover, also apply to performances and broadcasts which take place in Norway. The provision concerning the right of distribution in sections 42 and 45 shall apply to sound and film fixations made in Norway. - -

8.2. Limitations

Limitations and the management of rights by extended collective license (Act 2005:97) (applied by a reference in Section 42(5))

Section 12: Making copies for private use

Section 13a: Compulsory license for the use of works for educational use

Section 13b: Extended collective license for the use of works in educational activities

Section 15: Fixations made in health institutions, etc.

Section 16: Making copies in archives, libraries and museums, etc.

Section 16a: Extended collective license for the use of works in archives, libraries and museums

Section 17: Making copies for use by the disabled

Section 17b: Extended collective license for the production and use of fixations for the disabled

Section 18: Collective works for use in education, etc.

Section 22: Quotation

Section 25: News report in a broadcast or film

Section 31: Fixations of works for use in broadcasts

Section 32: Extended collective license for the use of works in the broadcasting organizations' collections

Section 34: Retransmission

Sections 35–38b: Common provisions regarding compulsory licenses, extended collective licenses, commissions, etc.

8.3. Other Possible Specificities

Checking accounts

Section 39c (Act 1995:27) (applied by a reference in Section 42(5))

If the author's remuneration is calculated on the basis of the assignee's turnover, sales figures, etc. the author may demand that a statement of accounts be rendered at least once a year. Similarly, the author may demand that each statement be accompanied by detailed information regarding the matters on which the calculation of remuneration is based.

The author may demand that the assignee's balance sheets, account books and stock, as well as certificates from the person who has exploited the work, shall be placed at the disposal of a state-authorized accountant or registered auditor who has been appointed by the author. The accountant or auditor shall inform the author as to the accuracy of the statement of accounts that has been drawn up, and as to any irregularities therein, but otherwise he has a duty of confidentiality as regards all other matters of which he may learn in the course of his examination.

The provisions of this section may not be departed from in a manner prejudicial to the author.

Inheritance

Section 39k (Act 2005:97) (applied by a reference in Section 42(5))

1. After the author's death the rules relating to inheritance, the community property of spouses and the right of the surviving spouse to remain in possession of the undistributed estate shall also apply to the author's copyright.
2. In his will the author may, with binding effect also as regards the surviving spouse and the heirs of his body, make provisions as to the exercise of his copyright or empower another person to make such provisions.
3. If a copyright has been inherited from the author by several persons jointly, the consent of all the heirs must be obtained for the initial issuing of the work, unless they or the author have, explicitly or tacitly, given such consent in advance. For the issuing of the work in another manner or in another form than previously, it is nonetheless sufficient that consent has been given by the heirs that calculated by share of inheritance form a majority. Any heir can demand or give consent to the reissuing of the work in the same manner. Each of the heirs

shall have the right to prosecute in respect of infringements of the copyright. This paragraph applies only where no other provision results from the provisions pursuant to the second paragraph.

4. Any infringement of such provisions as are referred to in the second paragraph or of the provisions of sections 3 and 11, second paragraph, may be prosecuted both by the author's surviving spouse and by any other of his relatives in direct line of ascent or descent, brothers and sisters, or by the person appointed pursuant to the second paragraph of this section.

Creditor prosecution

Section 39I, subsection 1 (Act 1995:83) (applied by a reference in Section 42(5))

- 1) The author's right to dispose of a literary, scientific or artistic work shall not be subject to execution or any other enforcement measure on the part of his creditors, either against himself, or against any person to whom, on the author's death, the copyright has passed in accordance with section 39 k, first paragraph.

Arrangements relating to property made between married couples

Section 50 (applied by a reference in Section 42(5))

1. Irrespective of any arrangement relating to property made between a husband and wife, an author who is married shall always retain sole control of his copyright.
2. If community property is divided during the lifetime of the author, his copyright shall be excluded from the settlement.

Other provisions

Joint ownership of rights

Section 6 (applied by a reference in Section 42(5))

1. If a literary, scientific or artistic work has two or more authors whose individual contributions cannot be distinguished as separate works, the copyright in the work shall belong to the authors jointly.
2. For the initial issuing of such a work the consent of all the authors must be obtained, unless such consent has, explicitly or tacitly, been given in advance. The same shall apply to the issuing of such a work in another manner or in another form than previously. However, it may be reissued in the same manner at the demand or with the consent of each of the authors.
3. Each of the authors shall have the right to prosecute in respect of infringements of the copyright.

Right holder presumption

Section 7 (applied by a reference in Section 42(5))

1. In the absence of proof to the contrary, the person whose name or generally known pseudonym, mark or symbol is entered in the usual manner on copies of a work, or stated when the work is made available to the public, shall be deemed to be the author of the work.
2. If a work is published without the name of the author being stated in accordance with the first paragraph, the editor, or if he is not named either, the publisher, may act on behalf of the author until the latter's name is stated in a new edition or in a notification to the Ministry concerned.

Section 11 (applied by a reference in Section 42(5))

1. The provisions of this chapter (= Ch. 2 Limitations) shall impose no further restriction of the author's rights pursuant to section 3 than that ensuing from section 29.
2. When a work is publicly reproduced pursuant to the provisions of this chapter, this may be done in the dimensions and form required for the purpose, but without thereby altering or prejudicing the character of the work. When a work is thus reproduced, the source shall always be stated in the manner required by proper usage.

Sweden

act on Copyright in Literary and Artistic Works 1960:729⁹

Elements

1. Framework Provisions

- 1.1. Definitions
- 1.2. National Treatment

2. Moral Rights

- 2.1 Paternity Right
 - Section 3, subsections 1, 3 (applied by a reference in Section 45, subsection 3)*
- 2.2 Integrity Right
 - Section 3, subsection 2, 3 (applied by a reference in Section 45, subsection 3)*

3. Live Performances – Exclusive Rights

- 3.1. Right of Fixation
 - Section 45, subsection 1, subparagraph 1 (Act 2014:884)*
- 3.2. Broadcasting and Communication to the Public
 - Section 45, subsection 1, subparagraph 3 (Act 2014:884)*
 - Section 2, subsection 3, subparagraph 1 (Act 2005:359) (applied by a reference in Section 45(3))*

4. Fixed Performances – Exclusive Rights

- 4.1. Right of Reproduction
 - Section 45, subsection 1, subparagraph 2 (Act 2014:884)*
- 4.2. Right of Distribution
 - Section 45, subsection 1, subparagraph 3 (Act 2014:884)*
 - Section 2, subsection 3, subparagraph 4 (Act 2005:359) (applied by a reference in Section 45(3))*
- 4.3. Right of Rental (and lending)
 - Section 45, subsection 1, subparagraph 3 (Act 2014:884)*
 - Section 2, subsection 3, subparagraph 4 (Act 2005:359) (applied by a reference in Section 45(3))*
- 4.4. Right of Making Available to the Public of Fixed Performances
 - Section 45, subsection 1, subparagraph 3 (Act 2014:884)*

⁹ As amended up to October 29, 2014. Unofficial translation March 5, 2013.

4.5. Right of Broadcasting

Section 45, subsection 1, subparagraph 3 (Act 2014/884)

Section 2, subsection 3, subparagraph 1 (Act 2005:359) (applied by a reference in Section 45(3))

4.6. Right of Communication to the Public

Section 45, subsection 1, subparagraph 3 (Act 2014/884)

Section 2, subsection 3, subparagraph 1 (Act 2005:359) (applied by a reference in Section 45(3))

4.7. Right of Public Performance

Section 45, subsection 1, subparagraph 3 (Act 2014/884)

Section 2, subsection 3, subparagraph 2 (Act 2005:359) (applied by a reference in Section 45(3))

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 29 (Act 1997:209) (applied by a reference in Section 45(3))

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- No such provision

5.3. Any Other Right to Remuneration

Right to remuneration for private copying

Section 26 k, subsection 1 (Act 2005:359) (applied by a reference in Section 45(3))

Right to remuneration for the making of copies for persons with a disability

Section 17, subsection 4 (Act 2005:359) (applied by a reference in Section 45(3))

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 39, First sentence (Act 1973:363) (applied by a reference in Section 45(3))

Section 2, subsection 3, subparagraph 4 (Act 2005:359) (applied by a reference in Section 45(3))

6.2. Any Other Presumption

Alterations and transfer of rights

Section 28 (applied by a reference in Section 45(3))

7. Transfer of Rights

General provisions on assignments

Section 27 (Act 1992:1687)

Exhaustion

Section 45, subsection 4 (Act 2014:884)

8. Additional Information (if available)

8.1. Applicability

Section 61, subsections 1 (first and second sentence) and 5 (first sentence) (Act 2007:521) (applied by a reference in Section 45(3))

8.2. Limitations

General provisions on limitations

Section 11 (Act 1993:1007)

Copies for private purposes

Section 12 (Act 2005:359)

Making and distribution of copies within certain archives and libraries

Section 16

Use of orphan works

Section 16a, subsection 3 (Act 2014:884)

Public performance

Section 21 (Act 2005:359)

Quotations

Section 22

Information on current events

Section 25 (Act 1993:1007)

Extracts from broadcasts (48 a §)

Section 25a (Act 2010:697)

Special provisions concerning radio and television

Section 26e (Act 2008:1416)

ECLs:

Common provisions concerning extended effect of collective licenses

Section 42a, subsection 4 (Act 2011:94)

ECL for authorities, companies and organizations etc.

Section 42b (Act 2013:691)

Making of copies within educational activities

Section 42c (Act 2005:359)

Possibilities for archives and libraries to communicate works to the public, etc.

Section 42d (Act 2005:359)

ECLs for radio and television

Section 42e (Act 2013:691)

Re-transmissions of works contained in radio or television broadcasts

Section 42f (Act 2005:359)

Re-use of works in radio or television

Section 42g (Act 2011:94)

General extended collective license

Section 42h (Act 2013:691)

8.3. Other Possible Specificities

Transfer of rights at the death of the performer

Section 41 (Act 1987:800) (applied by a reference in Section 45(3))

Legal seizure and copyright

Section 42 (Act 1987:800) (applied by a reference in Section 45(3))

Joint ownership of rights

Section 6 (applied by a reference in Section 45(3))

Right holder presumption

Section 7 (applied by a reference in Section 45(3)):

Section 11 (Act 1993: 1007) (applied by a reference in Section 45(3))

Chapter 6a on the protection of technological measures, etc.

Provisions of the Act on Copyright in Literary and Artistic Works 1960:729, Sweden

1. Framework Provisions

1.1. Definitions

1.2. National Treatment

2. Moral Rights

2.1 Paternity Right

Section 3, subsections 1, 3 (applied by a reference in Section 45, subsection 3)

1. When copies are made of a work, or when it is made available to the public, the name of the author shall be stated to the extent and in the manner required by proper usage.
3. The author may, with binding effect, waive his right under this Article only in relation to uses which are limited as to their character and scope.

2.2 Integrity Right

Section 3, subsections 2, 3 (applied by a reference in Section 45, subsection 3)

2. A work may not be changed in a manner which is prejudicial to the author's literary or artistic reputation or to his individuality, nor may it be made available to the public in such a form or in such a context as is prejudicial in the manner stated.
3. The author may, with binding effect, waive his right under this Article only in relation to uses which are limited as to their character and scope.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 45, subsection 1, subparagraph 1 (Act 2014:884)

1. Subject to the limitations prescribed in this Act, a performing artist has the exclusive right to exploit his performance of a literary or artistic work or of an expression of folklore, by
 - 1) fixing the performance on a gramophone record, a film or another material support from which it can be reproduced

3.2. Broadcasting and Communication to the Public

Section 45, subsection 1, subparagraph 3 (Act 2014:884)

1. Subject to the limitations prescribed in this Act, a performing artist has the exclusive right to exploit his performance of a literary or artistic work or of an expression of folklore, by
- 3) making the performance or a fixation of it available to the public.

Section 2, subsection 3, subparagraph 1 (Act 2005:359) (applied by a reference in Section 45(3))

3. The work is being made available to the public in the following cases
- 1) When the work is being communicated to the public. This is deemed to include any making available of the work to the public by wire or by wireless means that occurs from a place other than that where the public may enjoy the work. Communication to the public includes also acts of communication that occur in such a way that members of the public may access the work from a place and at a time individually chosen by them.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 45, subsection 1, subparagraph 2 (Act 2014:884)

1. Subject to the limitations prescribed in this Act, a performing artist has the exclusive right to exploit his performance of a literary or artistic work or of an expression of folklore, by
- 2) making copies of a fixation of the performance.¹⁰

4.2. Right of Distribution

Section 45, subsection 1, subparagraph 3 (Act 2014:884)

1. Subject to the limitations prescribed in this Act, a performing artist has the exclusive right to exploit his performance of a literary or artistic work or of an expression of folklore, by
- 3) making the performance or a fixation of it available to the public.

Section 2, subsection 3, subparagraph 4 (Act 2005:359) (applied by a reference in Section 45(3))

3. The work is being made available to the public in the following cases

¹⁰ According to Section 2, subsection 2(2) (applied by a reference in Section 45, subsection 3), this includes any direct or indirect, temporary or permanent preparation of copies of the fixation, regardless of the form or through which method this is carried out and regardless of whether it concerns the performance in whole or in part.

- 4) When copies of the work are placed on sale, leased, lent, or otherwise distributed to the public.

4.3. Right of Rental (and lending)

Section 45, subsection 1, subparagraph 3 (Act 2014:884)

1. Subject to the limitations prescribed in this Act, a performing artist has the exclusive right to exploit his performance of a literary or artistic work or of an expression of folklore, by
 - 3) making the performance or a fixation of it available to the public.

Section 2, subsection 3, subparagraph 4 (Act 2005:359) (applied by a reference in Section 45(3))

3. The work is being made available to the public in the following cases
 - 4) When copies of the work are placed on sale, leased, lent, or otherwise distributed to the public.

4.4. Right of Making Available to the Public of Fixed Performances

Section 45, subsection 1, subparagraph 3 (Act 2014:884)

1. Subject to the limitations prescribed in this Act, a performing artist has the exclusive right to exploit his performance of a literary or artistic work or of an expression of folklore, by
 - 3) making the performance or a fixation of it available to the public.

4.5. Right of Broadcasting

Section 45, subsection 1, subparagraph 3 (Act 2014:884)

1. Subject to the limitations prescribed in this Act, a performing artist has the exclusive right to exploit his performance of a literary or artistic work or of an expression of folklore, by
 - 3) making the performance or a fixation of it available to the public.

Section 2, subsection 3, subparagraph 1 (Act 2005:359) (applied by a reference in Section 45(3))

3. The work is being made available to the public in the following cases
 - 1) When the work is being communicated to the public. This is deemed to include any making available of the work to the public by wire or by wireless means that occurs from a place other than that where the public may enjoy the work. Communication to the public includes also acts of communication that occur in such a way that members of the public may access the work from a place and at a time individually chosen by them.

4.6. Right of Communication to the Public

Section 45, subsection 1, subparagraph 3 (Act 2014:884)

1. Subject to the limitations prescribed in this Act, a performing artist has the exclusive right to exploit his performance of a literary or artistic work or of an expression of folklore, by
- 3) making the performance or a fixation of it available to the public.

Section 2, subsection 3, subparagraph 1 (Act 2005:359) (applied by a reference in Section 45(3))

3. The work is being made available to the public in the following cases
 - 1) When the work is being communicated to the public. This is deemed to include any making available of the work to the public by wire or by wireless means that occurs from a place other than that where the public may enjoy the work. Communication to the public includes also acts of communication that occur in such a way that members of the public may access the work from a place and at a time individually chosen by them.

4.7. Right of Public Performance

Section 45, subsection 1, subparagraph 3 (Act 2014:884)

1. Subject to the limitations prescribed in this Act, a performing artist has the exclusive right to exploit his performance of a literary or artistic work or of an expression of folklore, by
- 3) making the performance or a fixation of it available to the public.

Section 2, subsection 3, subparagraph 2 (Act 2005:359) (applied by a reference in Section 45(3))

3. The work is being made available to the public in the following cases
 - 2) When the work is publicly performed. Such public performance includes only such cases where the work is being made available to the public, with or without the use of a technical device, at the same place as the one where the public may enjoy the work.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 29 (Act 1997:309) (applied by a reference in Section 45(3))

1. Where an author transfers to a producer of sound recordings or recordings of moving images his right to make a work available to the public through rental of such recordings, the author shall have a right to an equitable remuneration.
- 2) Contractual stipulations invalidating this right are null and void.

5.2. Any Other Right to Remuneration

Right to remuneration for private copying

Section 26k, subsection 1 (Act 2005:359) (applied by a reference in Section 45(3))

1. When a businessman, in the course of his professional activities, manufactures or imports into this country material supports on which sounds or moving images may be recorded and which are especially suitable for the making of copies of works for private purposes, the authors of such protected works, that have thereafter been broadcast by sound radio or television or have been published on material supports by means of which they can be reproduced, have a right to remuneration from the businessman.

Right to remuneration for the making of copies for persons with a disability

Section 17, subsection 4 (Act 2005:359) (applied by a reference in Section 45(3))

4. When libraries and organisations distribute or communicate copies of works to persons with a disability in such a way that those persons may keep a copy of the work, the author has a right to remuneration. The same applies if anyone, pursuant to the first Paragraph, second sentence, transmits more than a few copies to persons with a disability.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

On Film Contracts

Section 39, First sentence (Act 1973:363) (applied by a reference in Section 45(3))

A transfer of the right to record a literary or artistic work on a film shall include the right to make the work available to the public, through the film, in cinemas, on television or otherwise and to make spoken parts of the film available in textual form or to translate them into another language.

Section 2, subsection 3, subparagraph 4 (Act 2005:359) (applied by a reference in Section 45(3))

3. The work is being made available to the public in the following cases

- 4) When copies of the work are placed on sale, leased, lent, or otherwise distributed to the public.

6.2. Any Other Presumption

Alterations and transfer of rights

Section 28 (applied by a reference in Section 45(3))

In the absence of an agreement to the contrary, the person to whom a copyright has been transferred may not alter the work or transfer the copyright to others. If the copyright forms part of a business activity, it may be transferred together with the business activity or of part thereof; the transferor remains liable for the fulfilment of the agreement.

7. Transfer of Rights

General Provisions on Assignments

Section 27 (Act 1992:1687)

1. Subject to the limitation which follows from Article 3, copyright may be transferred entirely or partially.
2. The transfer of a copy does not include a transfer of the copyright. In the case of a portrait executed on commission, the author may, however, not exercise his right without the consent of the person who commissioned it or, after the death of such a person, the surviving spouse and heirs.
3. Provisions governing the transfer of copyright in certain specific cases are included in Articles 30–40 a §. Those provisions apply, however, only in the absence of an agreement to the contrary.

Exhaustion

Section 45, subsection 4 (Act 2014:884)

4. When a copy of a fixation pursuant to this Article has been, with the consent of the performing artist, transferred within the European Economic Area, the copy may be distributed further.

8. Additional Information

8.1. Applicability

Section 61, subsection 1 (first and second sentence), subsection 5 (first sentence) (Act 2007:521) (applied by a reference in Section 45(3))

1. The provisions of Articles 45, 47 and 48 apply to performances, sound recordings and sound radio and television broadcasts which take place in Sweden. In addition, the provisions of Article 45 apply to performances of persons who are Swedish nationals or have their habitual residence in Sweden - -.
5. Of the provisions in Article 45, the reference to Articles 26 k to 26 m (= *private copying compensations*) applies only to performances by someone who is a Swedish national or has his habitual residence in Sweden. - -

8.2. Limitations¹¹

Section 11 (Act 1993:1007): General provisions on limitations

Section 12 (Act 2005:359): Copies for private purposes

Section 16: Making and distribution of copies within certain archives and libraries

Section 16a, subsection 3 (Act 2014:884): Use of orphan works

Section 21 (Act 2005:359): Public performance

Section 22: Quotations

Section 25 (Act 1993:1007): Information on current events

Section 25a (Act 2010:697): Extracts from broadcasts (48 a §)

Section 26e (Act 2008:1416): Special provisions concerning radio and television

ECLs:

Section 42a, subsection 4 (Act 2011:94): Common provisions concerning extended effect of collective licenses

Section 42b (Act 2013:691): ECL for authorities, companies and organizations etc.

Section 42c (Act 2005:359): Making of copies within educational activities

Section 42d (Act 2005:359): Possibilities for archives and libraries to communicate works to the public, etc.

Section 42e (Act 2013:691): ECLs for radio and television

Section 42f (Act 2005:359): Re-transmissions of works contained in radio or television broadcasts

Section 42g (Act 2011:94): Re-use of works in radio or television

Section 42h (Act 2013:691): General extended collective license

8.3. Other Possible Specificities

Transfer of rights at the death of the performer

Section 41 (Act 1987:800) (applied by a reference in Section 45(3))

¹¹ Applied by a reference in Section 45, subsection 3.

1. Notwithstanding the provisions in Chapter 10, Article 3, first Paragraph, of the Marriage Code the provisions governing the division of property between spouses, inheritance and will shall, after the death of the author, apply to copyright. An administrator of the estate may not, without the consent of the heirs, exploit the work in a manner other than that in which it has been previously exploited.
2. The author may, with binding effect for the surviving spouse and heirs of his body, give directions in his will concerning the exercise of copyright or authorise somebody else to give such directions.

Legal seizure and copyright

Section 42 (Act 1987:800) (applied by a reference in Section 45(3))

Copyright shall not be subject to legal seizure as long as it remains with the author or with any other person who has acquired the copyright by virtue of division of property between spouses, inheritance or will. The same shall apply to manuscripts and to such works of art which have not been exhibited, placed on sale or otherwise authorised to be made available to the public.

Joint ownership of rights

Section 6 (applied by a reference in Section 45(3))

If a work has two or more authors, whose contributions do not constitute independent works, the copyright shall belong to the authors jointly. However, each one of them is entitled to bring an action for infringement.

Right holder presumption

Section 7 (applied by a reference in Section 45(3))

1. A person whose name or generally known pseudonym or signature appears in the usual manner on copies of the work or when it is made available to the public, shall, in the absence of proof to the contrary, be deemed to be its author.
2. If a work is published without the name of the author being stated in the manner prescribed in the first Paragraph, the editor, if he is named, or otherwise the publisher, shall represent the author until his name is stated in a new edition or in a notification to the Ministry of Justice.

Section 11 (Act 1993:1007) (applied by a reference in Section 45(3))

1. The provisions of this Chapter (= Ch. 2 Limitations on copyright) do not limit the author's right under Article 3, except as provided in Article 26 c.
2. When a work is used publicly on the basis of the provisions in this Chapter, the source shall be stated to the extent and in the manner required by proper usage, and the work may not be altered more than necessary for the use.

Chapter 6a on the protection of technological measures, etc. applies accordingly to the rights of performers.

Austria

federal Law on Copyright in Works of Literature and Art and on Related Rights (Copyright Act)¹²

Elements

1. Framework Provisions

1.1. Definitions

Section 66: Definition of performer

1.2. National Treatment

Section 97

2. Moral Rights

2.1 Paternity right

Section 67, subsections 1, 3, 4

2.2 Integrity right

Section 67, subsections 2, 3, 4

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 68, subsection 1, subparagraph 1

3.2. Broadcasting and Communication to the Public

Section 68, subsection 1, subparagraphs 2, 3

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 68, subsection 1, subparagraph 1

Section 15, subsection 1 (applied by a reference in Section 68, subsection 4)

4.2. Right of Distribution

Section 68, subsection 1, subparagraph 1

Section 16, subsections 1, 3 (applied by a reference in Section 68, subsection 4)

4.3. Right of Rental (and lending)

Section 16a (applied by a reference in Section 68, subsection 4)

4.4. Right of Making Available to the Public of Fixed Performances

¹² The current version of the Act is available in German at <https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10001848>

Section 68, subsection 1, subparagraph 1

Section 18a (applied by a reference in Section 68, subsection 4)

4.5. Right of Broadcasting

Partially, see Section 68, subsection 1, subparagraph 2

4.6. Right of Communication to the Public

Partially, see Section 68, subsection 1, subparagraph 3

4.7. Right of Public Performance

– No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

– No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 16a, subsection 5 (applied by a reference in Section 68 subsection 4)

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

– No such provision

5.3. Any Other Right to Remuneration

Vervielfältigung zum eigenen und zum privaten Gebrauch (private copying)

Section 42b, subsection 1 (applied by a reference in Section 71, subsection 1)

Öffentliche Zurverfügungstellung für Unterricht und Lehre (making available for education purposes)

Section 42g (applied by a reference in Section 71, subsection 6)

Verwaiste Werke (use of orphan works)

Section 56e (applied by a reference in Section 71, subsection 6)

6. Presumptions (unless otherwise agreed):

6.1. The transfer of the right to film a performance shall comprise the right to distribute the recorded performance to the public by renting.

– No such provision; potentially part of Section 69

6.2. Any Other Presumption

– No other presumptions.

7. Transfer of Rights

Rechte an Darbietungen für ein Filmwerk

Section 69

Übertragung des Urheberrechtes

Section 23 (applied by a reference in Section 68, subsection 4)

Übertragung der Werknutzungsrechte

Section 27 (applied by a reference in Section 68, subsection 4)

Section 28 (applied by a reference in Section 68, subsection 4)

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Provisions of the Federal Law on Copyright in Works of Literature and Art and on Related Rights (Copyright Act), Austria

1. Framework Provisions

1.1. Definitions

Ausübender Künstler

Section 66

Ausübender Künstler im Sinn dieses Bundesgesetzes ist, wer ein Werk vorträgt, aufführt, auf eine andere Weise darbietet oder an einer solchen Darbietung künstlerisch mitwirkt, und zwar unabhängig davon, ob das dargebotene Werk den urheberrechtlichen Schutz dieses Bundesgesetzes genießt oder nicht.

1.2. National Treatment

Darbietungen

Section 97

1. Darbietungen, die im Inland stattfinden, sind nach den Vorschriften der §§ 66 bis 72 ohne Rücksicht darauf geschützt, welchem Staat der ausübende Künstler oder der Veranstalter angehören.
2. Bei Darbietungen, die im Ausland stattfinden, gelten die §§ 66 bis 72 zugunsten österreichischer Staatsbürger. Ausländer werden bei solchen Darbietungen unbeschadet von Staatsverträgen unter der Voraussetzung geschützt, dass die Darbietungen österreichischer Staatsbürger auch in dem Staat, dem der Ausländer angehört, in annähernd gleicher Weise geschützt sind, jedenfalls aber im selben Ausmaß wie Darbietungen der Angehörigen dieses Staates. Diese Gegenseitigkeit ist dann anzunehmen, wenn sie in einer Kundmachung des Bundesministers für Justiz im Hinblick auf die in dem betreffenden Staat bestehende Rechtslage festgestellt worden ist. Darüber hinaus können die zuständigen Behörden die Gegenseitigkeit mit einem anderen Staat vertraglich vereinbaren, wenn dies zur Wahrung der Interessen von österreichischen ausübenden Künstlern geboten erscheint.

2. Moral Rights

2.1 Paternity Right

Schutz geistiger Interessen

Section 67, subsections 1, 3, 4

1. Der ausübende Künstler hat das Recht, in Bezug auf seine Darbietung als solcher anerkannt zu werden. Er kann dabei bestimmen, ob und mit welchem Namen er genannt wird.
3. Die in den Abs. 1 und 2 bezeichneten Rechte enden keinesfalls vor dem Tod des ausübenden Künstlers. Nach seinem Tod stehen sie bis zum Erlöschen der Verwertungsrechte denjenigen Personen zu, auf die die Verwertungsrechte übergegangen sind. Haben mehrere ausübende Künstler gemeinsam eine Darbietung erbracht, so ist der Tod des letzten der beteiligten ausübenden Künstler maßgeblich.
4. Die Abs. 1 bis 3 gelten für diejenigen Personen, die bloß in einem Chor oder Orchester oder auf ähnliche Art mitwirken, mit der Maßgabe, dass anstelle des Namens des Verwertungsberechtigten der Name des Chores oder Orchesters anzugeben ist; § 70 gilt sinngemäß.

2.1 Integrity Right

Schutz geistiger Interessen

Section 67, subsections 2, 3, 4

2. Eine Darbietung darf weder auf eine Art, die sie der Öffentlichkeit zugänglich macht, benutzt noch zum Zweck der Verbreitung vervielfältigt werden, wenn sie mit solchen Änderungen oder so mangelhaft wiedergegeben wird, dass dadurch der künstlerische Ruf des ausübenden Künstlers beeinträchtigt werden kann.
3. Die in den Abs. 1 und 2 bezeichneten Rechte enden keinesfalls vor dem Tod des ausübenden Künstlers. Nach seinem Tod stehen sie bis zum Erlöschen der Verwertungsrechte denjenigen Personen zu, auf die die Verwertungsrechte übergegangen sind. Haben mehrere ausübende Künstler gemeinsam eine Darbietung erbracht, so ist der Tod des letzten der beteiligten ausübenden Künstler maßgeblich.
4. Die Abs. 1 bis 3 gelten für diejenigen Personen, die bloß in einem Chor oder Orchester oder auf ähnliche Art mitwirken, mit der Maßgabe, dass anstelle des Namens des Verwertungsberechtigten der Name des Chores oder Orchesters anzugeben ist; § 70 gilt sinngemäß.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Verwertungsrechte

Section 68, subsection 1, subparagraph 1

1. Der ausübende Künstler hat mit den von diesem Bundesgesetz bestimmten Beschränkungen das ausschließliche Recht,
 - 1) seine Darbietung auf einem Bild- oder Schallträger festzuhalten, diesen zu vervielfältigen und zu verbreiten und die Darbietung der Öffentlichkeit zur Verfügung zu stellen;

3.2. Broadcasting and Communication to the Public

Verwertungsrechte

Section 68, subsection 1, subparagraphs 2, 3

1. Der ausübende Künstler hat mit den von diesem Bundesgesetz bestimmten Beschränkungen das ausschließliche Recht,
 - 2) seine Darbietung durch Rundfunk zu senden, es sei denn, dass die Sendung mit Hilfe eines Bild- oder Schallträgers vorgenommen wird, der mit seiner Einwilligung hergestellt und verbreitet wurde;
 - 3) seine Darbietung durch Lautsprecher oder durch eine andere technische Einrichtung außerhalb des Ortes (Theater, Saal, Platz, Garten u. dgl.), wo sie stattfindet, öffentlich wiederzugeben, es sei denn, dass die Wiedergabe mit Hilfe eines Bild- oder Schallträgers, der mit seiner Einwilligung hergestellt und verbreitet wurde, oder mit Hilfe einer zulässigen Rundfunksendung vorgenommen wird.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Verwertungsrechte

Section 68, subsection 1, subparagraph 1

1. Der ausübende Künstler hat mit den von diesem Bundesgesetz bestimmten Beschränkungen das ausschließliche Recht,
 - 1) seine Darbietung auf einem Bild- oder Schallträger festzuhalten, diesen zu vervielfältigen und zu verbreiten und die Darbietung der Öffentlichkeit zur Verfügung zu stellen;

Vervielfältigungsrecht

Section 15, subsection 1 (applied by a reference in Section 68, subsection 4)

1. Der Urheber hat das ausschließliche Recht, das Werk - gleichviel in welchem Verfahren, in welcher Menge und ob vorübergehend oder dauerhaft - zu vervielfältigen

4.2. Right of Distribution

Verwertungsrechte

Section 68, subsection 1, subparagraph 1

1. Der ausübende Künstler hat mit den von diesem Bundesgesetz bestimmten Beschränkungen das ausschließliche Recht,
 - 1) seine Darbietung auf einem Bild- oder Schallträger festzuhalten, diesen zu vervielfältigen und zu verbreiten und die Darbietung der Öffentlichkeit zur Verfügung zu stellen;

Verbreitungsrecht

Section 16, subsections 1, 3 (applied by a reference in Section 68, subsection 4)

1. Der Urheber hat das ausschließliche Recht, Werkstücke zu verbreiten. Kraft dieses Rechtes dürfen Werkstücke ohne seine Einwilligung weder feilgehalten noch auf eine Art, die das Werk der Öffentlichkeit zugänglich macht, in Verkehr gebracht werden.
3. Dem Verbreitungsrecht unterliegen - vorbehaltlich des § 16a - Werkstücke nicht, die mit Einwilligung des Berechtigten durch Übertragung des Eigentums in einem Mitgliedstaat der Europäischen Gemeinschaft oder in einem Vertragsstaat des Europäischen Wirtschaftsraums in Verkehr gebracht worden sind.

4.3. Right of Rental (and lending)

Vermieten und Verleihen

Section 16a (applied by a reference in Section 68, subsection 4)

1. § 16 Abs. 3 gilt nicht für das Vermieten (Abs. 3) von Werkstücken.
2. § 16 Abs. 3 gilt für das Verleihen (Abs. 3) von Werkstücken mit der Maßgabe, daß der Urheber einen Anspruch auf angemessene Vergütung hat. Solche Ansprüche können nur von Verwertungsgesellschaften geltend gemacht werden.
3. Im Sinn dieser Bestimmung ist unter Vermieten die zeitlich begrenzte, Erwerbszwecken dienende Gebrauchsüberlassung zu verstehen, unter Verleihen die zeitlich begrenzte, nicht Erwerbszwecken dienende Gebrauchsüberlassung durch eine der Öffentlichkeit zugängliche Einrichtung (Bibliothek, Bild- oder Schallträgersammlung, Artothek und dergleichen).
4. Die Abs. 1 und 2 gelten nicht

- 1) für das Vermieten und Verleihen zum Zweck der Rundfunksendung (§ 17) sowie des öffentlichen Vortrags und der öffentlichen Aufführung und Vorführung (§ 18),
 - 2) für Werke der angewandten Kunst (des Kunstgewerbes).
5. Gestattet ein Werknutzungsberechtigter oder der nach § 38 Abs. 1 berechnete Filmhersteller gegen Entgelt anderen das Vermieten oder Verleihen von Werkstücken, so hat der Urheber gegen den Werknutzungsberechtigten beziehungsweise den Filmhersteller einen unverzichtbaren Anspruch auf einen angemessenen Anteil an diesem Entgelt. Steht der Vergütungsanspruch für das Verleihen von Werkstücken nach dem Gesetz oder auf Grund eines Vertrages einem anderen zu, so hat der Urheber einen unverzichtbaren Anspruch auf einen angemessenen Anteil an der Vergütung.

4.4. Right of Making Available to the Public of Fixed Performances

Verwertungsrechte

Section 68, subsection 1, subparagraph 1

1. Der ausübende Künstler hat mit den von diesem Bundesgesetz bestimmten Beschränkungen das ausschließliche Recht,
 - 1) seine Darbietung auf einem Bild- oder Schallträger festzuhalten, diesen zu vervielfältigen und zu verbreiten und die Darbietung der Öffentlichkeit zur Verfügung zu stellen;

Zurverfügungstellungsrecht

Section 18a (applied by a reference in Section 68, subsection 4)

1. Der Urheber hat das ausschließliche Recht, das Werk der Öffentlichkeit drahtgebunden oder drahtlos in einer Weise zur Verfügung zu stellen, dass es Mitgliedern der Öffentlichkeit von Orten und zu Zeiten ihrer Wahl zugänglich ist.
2. Wenn sich dieses Gesetz des Ausdrucks „ein Werk der Öffentlichkeit zur Verfügung stellen“ oder „öffentliche Zurverfügungstellung eines Werkes“ bedient, ist darunter nur die dem Urheber nach Abs. 1 vorbehaltene Verwertung zu verstehen.

4.5. Right of Broadcasting

Partially,

Verwertungsrechte

Section 68, subsection 1, subparagraph 2

1. Der ausübende Künstler hat mit den von diesem Bundesgesetz bestimmten Beschränkungen das ausschließliche Recht,

- 2) seine Darbietung durch Rundfunk zu senden, es sei denn, dass die Sendung mit Hilfe eines Bild- oder Schallträgers vorgenommen wird, der mit seiner Einwilligung hergestellt und verbreitet wurde;

4.6. Right of Communication to the Public

Partially,

Verwertungsrechte

Section 68, subsection 1, subparagraph 3

1. Der ausübende Künstler hat mit den von diesem Bundesgesetz bestimmten Beschränkungen das ausschließliche Recht,
- 3) seine Darbietung durch Lautsprecher oder durch eine andere technische Einrichtung außerhalb des Ortes (Theater, Saal, Platz, Garten u. dgl.), wo sie stattfindet, öffentlich wiederzugeben, es sei denn, dass die Wiedergabe mit Hilfe eines Bild- oder Schallträgers, der mit seiner Einwilligung hergestellt und verbreitet wurde, oder mit Hilfe einer zulässigen Rundfunksendung vorgenommen wird.

4.7. Right of Public Performance

No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Vermieten und Verleihen

Section 16a, subsection 5 (applied by a reference in Section 68, subsection 4)

5. Gestattet ein Werknutzungsberechtigter oder der nach § 38 Abs. 1 berechnete Filmhersteller gegen Entgelt anderen das Vermieten oder Verleihen von Werkstücken, so hat der Urheber gegen den Werknutzungsberechtigten beziehungsweise den Filmhersteller einen unverzichtbaren Anspruch auf einen angemessenen Anteil an diesem Entgelt. Steht der Vergütungsanspruch für das Verleihen von Werkstücken nach dem Gesetz oder auf Grund eines Vertrages einem anderen zu, so hat der Urheber einen unverzichtbaren Anspruch auf einen angemessenen Anteil an der Vergütung.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision

5.3. Any Other Right to Remuneration

Vervielfältigung zum eigenen und zum privaten Gebrauch

Section 42b, subsection 1 (applied by reference in Section 71, subsection 1)

1. Ist von einem Werk, das durch Rundfunk gesendet, der Öffentlichkeit zur Verfügung gestellt oder auf einem zu Handelszwecken hergestellten Speichermedium festgehalten worden ist, seiner Art nach zu erwarten, dass es durch Festhalten auf einem Speichermedium nach § 42 Abs. 2 bis 7 zum eigenen oder privaten Gebrauch vervielfältigt wird, so hat der Urheber Anspruch auf eine angemessene Vergütung (Speichermedienvergütung), wenn Speichermedien jeder Art, die für solche Vervielfältigungen geeignet sind, im Inland gewerbemäßig in Verkehr kommen.

Öffentliche Zurverfügungstellung für Unterricht und Lehre

Section 42g (applied by a reference in Section 71, subsection 6)

1. Schulen, Universitäten und andere Bildungseinrichtungen dürfen für Zwecke des Unterrichts beziehungsweise der Lehre veröffentlichte Werke zur Veranschaulichung im Unterricht für einen bestimmt abgegrenzten Kreis von Unterrichtsteilnehmern beziehungsweise Lehrveranstaltungsteilnehmern vervielfältigen und der Öffentlichkeit zur Verfügung stellen, soweit dies zu dem jeweiligen Zweck geboten und zur Verfolgung nicht kommerzieller Zwecke gerechtfertigt ist.
2. Abs. 1 gilt nicht für Werke, die ihrer Beschaffenheit und Bezeichnung nach zum Schul- oder Unterrichtsgebrauch bestimmt sind. Für Filmwerke gilt Abs. 1, wenn seit der Erstaufführung des Filmwerkes entweder im Inland oder in deutscher Sprache oder in einer Sprache einer in Österreich anerkannten Volksgruppe mindestens zwei Jahre vergangen sind.
3. Für die Vervielfältigung und die öffentliche Zurverfügungstellung nach Abs. 1 steht dem Urheber ein Anspruch auf angemessene Vergütung zu. Solche Ansprüche können nur von Verwertungsgesellschaften geltend gemacht werden.

Verwaiste Werke

Section 56e (applied by a reference in Section 71, subsection 6)

1. Öffentlich zugängliche Einrichtungen, die Werkstücke sammeln, dürfen von Werken, für die keine zur Gestattung der Vervielfältigung und der Zurverfügungstellung berechnete Person bekannt ist (verwaiste Werke), Vervielfälti-

gungstücke von eigenen Werkstücken herstellen und der Öffentlichkeit zur Verfügung stellen,

- 1) wenn dies der Erfüllung ihrer im Gemeinwohl liegenden Aufgaben dient, insbesondere der Bewahrung, der Restaurierung sowie der Bereitstellung des kulturellen und bildungspolitischen Zwecken dienenden Zugangs zu ihrem Werkbestand, und unentgeltlich oder nur gegen ein die Kosten der Digitalisierung und Zurverfügungstellung deckendes Entgelt erfolgt, und
 - 2) wenn das Werk in die Sammlung einer berechtigten Einrichtung aufgenommen wurde und entweder
 - a. in Form von Büchern, Fachzeitschriften, Zeitungen, Zeitschriften oder in sonstiger Schriftform veröffentlicht wurde, wobei auch Werke oder Schutzgegenstände umfasst sind, die in solche schriftlichen Werke eingebettet oder eingebunden sind, oder
 - b. auf einem Schallträger oder in Laufbildern festgehalten ist, und
 - 3) wenn das Werk in einem Mitgliedstaat der Europäischen Union oder einem Vertragsstaat des Europäischen Wirtschaftsraums
 - a. erschienen (§ 9) ist oder,
 - b. wenn es nicht erschienen ist, mit Einwilligung des Berechtigten erstmals gesendet wurde, oder,
 - c. wenn es weder erschienen ist noch gesendet wurde, mit Einwilligung des Berechtigten durch die Einrichtung der Öffentlichkeit zugänglich gemacht wurde und anzunehmen ist, dass sich der Rechteinhaber der Vervielfältigung und Zurverfügungstellung nicht widersetzen würde, und
 - 4) soweit und solange
 - a. in Österreich nach sorgfältiger Suche keine zur Gestattung der Vervielfältigung und Zurverfügungstellung berechnigte Person festgestellt oder ausfindig gemacht werden konnte und die Ergebnisse dieser Suche dokumentiert und an die Aufsichtsbehörde für Verwertungsgesellschaften weitergeleitet wurden, oder
 - b. in einem anderen Mitgliedstaat der Europäischen Union oder einem Vertragsstaat des EWR das Ergebnis der sorgfältigen Suche im Sinn der Richtlinie 2012/28/EG in der vom Harmonisierungsamt für den Binnenmarkt eingerichteten Datenbank erfasst ist.
2. Öffentlich-rechtliche Rundfunkunternehmer dürfen Vervielfältigungstücke von einem auf einem Schallträger oder in Laufbildern festgehaltenen Werk unter den Voraussetzungen des Abs. 1 Z 1, 3 und 4 herstellen und diese der Öffentlichkeit zur Verfügung stellen, wenn das Werk im Auftrag dieses oder eines anderen öffentlich-rechtlichen Rundfunkunternehmers vor dem 1. Januar 2003 hergestellt und in das Archiv einer dieser Rundfunkunternehmer aufgenommen wurde.

3. Zur Feststellung, ob ein Werk verwaist ist, haben die berechtigten Einrichtungen vor dessen Nutzung sorgfältig nach der zur Gestattung der Vervielfältigung und Zurverfügungstellung des Werks berechtigten Person zu suchen. Dabei haben sie geeignete Quellen nach Treu und Glauben zu konsultieren. Geeignet sind zumindest die im Anhang der Richtlinie 2012/28/EU angeführten Quellen. Der Bundesminister für Justiz kann durch Verordnung die Quellen für die einzelnen Kategorien von Werken bestimmen, die im Rahmen der Suche zu konsultieren sind.
4. Die Suche ist in Österreich durchzuführen, wenn das Werk in Österreich erschienen ist oder zuerst gesendet wurde. Bei Filmwerken ist die Suche in Österreich durchzuführen, wenn deren Hersteller seine Hauptniederlassung oder seinen gewöhnlichen Aufenthalt in Österreich hat. Bei nicht erschienenen oder gesendeten Werken ist die Suche in Österreich durchzuführen, wenn die Einrichtung, die das Werk mit Zustimmung des Rechteinhabers öffentlich zugänglich gemacht hat, in Österreich belegen ist. Bei Hinweisen auf relevante Informationen zu Rechteinhabern in anderen Ländern sind auch verfügbare Informationsquellen in diesen anderen Ländern zu konsultieren.
5. Die Suche nach Abs. 4 ist in einem Protokoll zu dokumentieren. Dieses Protokoll ist für die Dauer der Nutzung und für einen Zeitraum von sieben Jahren nach deren Beendigung aufzubewahren. Folgende Informationen sind an die Aufsichtsbehörde für Verwertungsgesellschaften weiterzuleiten:
 - 1) die genaue Bezeichnung jener Werke, die nach den Ergebnissen der Suche als verwaist anzusehen sind;
 - 2) die Art der Nutzung dieser Werke durch die Einrichtung;
 - 3) den Umstand, dass eine Person nachträglich festgestellt oder ausfindig gemacht werden konnte, die zur Gestattung der Vervielfältigung und Zurverfügungstellung berechtigt ist;
 - 4) die jeweiligen Kontaktangaben der betreffenden Einrichtung.
 Die Aufsichtsbehörde für Verwertungsgesellschaften hat diese Informationen unverzüglich nach deren Erhalt an das Harmonisierungsamt für den Binnenmarkt zur Veröffentlichung in der von diesem geführten Online-Datenbank weiterzuleiten.
6. Sobald eine Einrichtung Kenntnis von der Identität und dem Aufenthaltsort einer zur Gestattung der Vervielfältigung und Zurverfügungstellung berechtigten Person erlangt, hat sie jede weitere Nutzung des verwaisten Werks ohne deren Zustimmung unverzüglich einzustellen. Für die vorherige Nutzung hat die Einrichtung auf Verlangen des Berechtigten eine angemessene Vergütung zu leisten. Bei Bemessung der Höhe der Vergütung ist davon auszugehen, dass das Werk in demjenigen Mitgliedstaat der Europäischen Union oder Vertragsstaat des EWR genutzt worden ist, in dem die das Werk nutzende Einrichtung belegen ist. Der Anspruch auf die Vergütung verjährt in zehn Jahren ab der Nutzung des Werks

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

No such provision; potentially part of Section 69 (See the next comment)

6.2. Any Other Presumption

No other presumptions.

7. Transfer of Rights

Rechte an Darbietungen für ein Filmwerk

Section 69

Die Verwertungsrechte ausübender Künstler, die an den zum Zweck der Herstellung eines gewerbsmäßig hergestellten Filmwerkes oder anderen kinematographischen Erzeugnisses vorgenommenen Darbietungen in Kenntnis dieses Zwecks mitgewirkt haben, stehen dem Inhaber des Unternehmens (Filmhersteller oder Hersteller) zu. Die gesetzlichen Vergütungsansprüche stehen den ausübenden Künstlern und dem Filmhersteller oder Hersteller je zur Hälfte zu, soweit sie nicht unverzichtbar sind.

Übertragung des Urheberrechtes

Section 23 (applied by a reference in Section 68, subsection 4)

1. Das Urheberrecht ist vererblich; in Erfüllung einer auf den Todesfall getroffenen Anordnung kann es auch auf Sondernachfolger übertragen werden.
2. Wird die Verlassenschaft eines Miturhebers von niemand erworben und auch nicht als erbloses Gut vom Staat übernommen, so geht das Miturheberrecht auf die anderen Miturheber über. Dasselbe gilt im Falle des Verzichtes eines Miturhebers auf sein Urheberrecht, soweit dieser Verzicht wirkt.
3. Im übrigen ist das Urheberrecht unübertragbar.
4. Geht das Urheberrecht auf mehrere Personen über, so sind auf sie die für Miturheber (§ 11) geltenden Vorschriften entsprechend anzuwenden.

Übertragung der Werknutzungsrechte

Section 27 (applied by a reference in Section 68, subsection 4)

1. Werknutzungsrechte sind vererblich und veräußerlich.
2. Auf Sondernachfolger kann ein Werknutzungsrecht in der Regel nur mit Einwilligung des Urhebers übertragen werden. Die Einwilligung kann nur aus einem wichtigen Grunde verweigert werden. Sie gilt als erteilt, wenn der Urheber sie nicht binnen zwei Monaten nach dem Empfang der schriftlichen Aufforderung

des Werknutzungsberechtigten oder dessen, auf den das Werknutzungsrecht übertragen werden soll, versagt; auf diese Wirkung muß in der Aufforderung ausdrücklich hingewiesen sein.

3. Wer ein Werknutzungsrecht im Wege der Sondernachfolge erwirbt, hat an Stelle des Veräußerers die Verbindlichkeiten zu erfüllen, die diesem nach dem mit dem Urheber geschlossenen Vertrag obliegen. Für das dem Urheber gebührende Entgelt sowie für den Schaden, den der Erwerber im Falle der Nichterfüllung einer der aus diesem Vertrag für ihn entspringenden Pflichten dem Urheber zu ersetzen hat, haftet der Veräußerer dem Urheber wie ein Bürge und Zahler.
4. Vom Veräußerer mit dem Erwerber ohne Einwilligung des Urhebers getroffene Vereinbarungen, die dem Absatz 3 zum Nachteil des Urhebers widersprechen, sind diesem gegenüber unwirksam.
5. Die Haftung des Erwerbers für einen schon vor der Übernahme gegen den Veräußerer entstandenen Schadenersatzanspruch des Urhebers richtet sich nach den allgemeinen Vorschriften.

Section 28

Subsection 1 (applied by a reference in Section 68, subsection 4)

1. Ist nichts anderes vereinbart, so kann ein Werknutzungsrecht mit dem Unternehmen, zu dem es gehört, oder mit einem solchen Zweige des Unternehmens auf einen anderen übertragen werden, ohne daß es der Einwilligung des Urhebers bedarf.

8. Additional Information

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Czech Republic

copyright Act¹³

Elements

1. Framework Provisions

1.1. Definitions

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1.2. National Treatment

2. Moral Rights

2.1 Paternity Right

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4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

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4.3. Right of Rental (and lending)

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4.4. Right of Making Available to the Public of Fixed Performances

Section 71, subsection 2, subparagraph g

Section 18, subsection 2 (applied by a reference in Section 74)

4.5. Right of Broadcasting

- No such provision, potentially part of:

Section 71, subsection 2, subparagraph g

13 An unofficial translation of the Act was received from Adéla Faladová, Deputy Director at the Copyright Department at the Ministry of Culture in Czech Republic.

- Section 18, subsection 2 (applied by a reference in Section 74)*
- 4.6. Right of Communication to the Public
Section 71, subsection 2, subparagraph g
- 4.7. Right of Public Performance
- No such provision, potentially part of:
Section 71, subsection 2, subparagraph g
Section 18, subsection 2 (applied by a reference in Section 74)
- 4.8. Any Other Exclusive Right Concerning Fixed Performances
- No other exclusive rights.

5. Rights to Remuneration

- 5.1. Right to Remuneration for Rental of a Copy of a Film
Section 25a (applied by a reference in Section 74)
- 5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film
- No such provision.
- 5.3. Any Other Right to Remuneration
Right to Remuneration in Connection with Reproduction of Work for Personal Use and for Legal Person's Own Internal Use
Section 25 (applied by a reference in Section 74)
Employee work
Section 58, subsection 6 (applied by a reference in Section 74)

6. Presumptions (unless otherwise agreed):

- 6.1. The transfer of the right to film a performance shall comprise the right to distribute the recorded performance to the public by renting.
- No such provision
- 6.2. Any Other Presumption
Works Used Audiovisually (presumption on acts authorized by a written permission)
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7. Transfer of Rights

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Provisions of the Copyright Act, Czech Republic

1. Framework Provisions

1.1. Definitions

Artistic Performance and Performer

Section 67

1. An artistic performance is the performance of an actor, singer, musician, dancer, conductor, choirmaster, director or any other person who acts, sings, recites, presents or otherwise performs an artistic work, including works of traditional folk culture. The performance of an artiste, although he shall not perform an artistic work, shall also be deemed an artistic performance.
2. A performer is the natural person who created the artistic performance.

1.2. National Treatment

2. Moral Rights

2.1 Paternity Right

Moral Rights of Performer

Section 70, subsections 1, 2, 3

1. The performer shall have the right to decide about the making public of his artistic performance.
2. The soloist, where he creates the performance alone, the conductor, choirmaster, theatre director and soloist, where they create the performance together with the members of an artistic ensemble, shall have the right to decide whether and how their names are to be indicated when their performance is made public and further exploited. Performers as members of an artistic ensemble shall only enjoy the right pursuant to the preceding sentence in respect of the joint name (joint pseudonym) under which they jointly create the performance; this shall be without prejudice to any agreement on the indication of their names pursuant to the preceding sentence.
3. The performer shall, however, not be entitled to the right pursuant to Paragraph (2) in cases justified by the way of the exploitation of the performance.

2.2 Integrity Right

Moral Rights of Performer

Section 70, subsection 4

4. The performer shall have the right to protection against any disfigurement, deformation or any other alteration of his performance, which may affect his reputation; performers as defined in Article 68 Paragraph (1) shall be obliged to exercise appropriate mutual consideration.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Economic Rights of Performer

Section 71, subsection 2, subparagraph b

2. The right to use an artistic performance shall be understood to mean:
 - b. The right to make a fixation of the live performance;

3.2. Broadcasting and Communication to the Public

Economic Rights of Performer

Section 71, subsection 2, subparagraph a

2. The right to use an artistic performance shall be understood to mean:
 - a. The right to broadcast and otherwise communicate the live performance to the public;

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Economic Rights of Performer

Section 71, subsection 2, subparagraph c

2. The right to use an artistic performance shall be understood to mean:
 - c. The right to reproduce of the fixed performance;

4.2. Right of Distribution

Economic Rights of Performer

Section 71, subsection 2, subparagraph d

2. The right to use an artistic performance shall be understood to mean:
 - d. The right to distribute the reproductions of the fixed performance;

4.3. Right of Rental (and lending)

Economic Rights of Performer

Section 71, subsection 2, subparagraphs e, f

3. The right to use an artistic performance shall be understood to mean:
 - e. The right of rental of copies of the fixed performances;
 - f. The right of lending of copies of the fixed performance;

4.4. Right of Making Available to the Public of Fixed Performances

Economic Rights of Performer

Section 71, subsection 2, subparagraph g

2. The right to use an artistic performance shall be understood to mean:
 - g. The right of communication of the fixed performance to the public.

Communication to the Public

Section 18, subsection 2 (applied by a reference in Section 74)

2. The communication of the work to the public pursuant to Paragraph (1) shall also mean making the work available in such a way that members of the public may access it from a place and at a time individually chosen by them, especially by using a computer network or similar network.

4.5. Right of Broadcasting

No such explicit provision, potentially part of:

Economic Rights of Performer

Section 71, subsection 2, subparagraph g

2. The right to use an artistic performance shall be understood to mean:
 - g. The right of communication of the fixed performance to the public.

Communication to the Public

Section 18 (applied by a reference in Section 74)

1. The communication of a work to the public shall mean making the work available in an intangible form, live or from a recording, by wire or wireless means.
2. The communication of the work to the public pursuant to Paragraph (1) shall also mean making the work available in such a way that members of the public may access it from a place and at a time individually chosen by them, especially by using a computer network or similar network.
3. The communication of the work to the public shall not mean the mere operation of a facility enabling or ensuring such communication.

4. The author's right to communicate the work to the public shall not be exhausted by communicating it to the public as specified in Paragraphs 1 and 2.

4.6. Right of Communication to the Public

Economic Rights of Performer

Section 71, subsection 2, subparagraph g

2. The right to use an artistic performance shall be understood to mean:
 - g. The right of communication of the fixed performance to the public.

Communication to the Public

Section 18 (applied by a reference in Section 74)

1. The communication of a work to the public shall mean making the work available in an intangible form, live or from a recording, by wire or wireless means.
2. The communication of the work to the public pursuant to Paragraph (1) shall also mean making the work available in such a way that members of the public may access it from a place and at a time individually chosen by them, especially by using a computer network or similar network.
3. The communication of the work to the public shall not mean the mere operation of a facility enabling or ensuring such communication.
4. The author's right to communicate the work to the public shall not be exhausted by communicating it to the public as specified in Paragraphs 1 and 2.

4.7. Right of Public Performance

No such explicit provision, potentially part of:

Economic Rights of Performer

Section 71, subsection 2, subparagraph g

2. The right to use an artistic performance shall be understood to mean:
 - g. The right of communication of the fixed performance to the public.

Communication to the Public

Section 18 (applied by a reference in Section 74)

1. The communication of a work to the public shall mean making the work available in an intangible form, live or from a recording, by wire or wireless means.
2. The communication of the work to the public pursuant to Paragraph (1) shall also mean making the work available in such a way that members of the public may access it from a place and at a time individually chosen by them, especially by using a computer network or similar network.

3. The communication of the work to the public shall not mean the mere operation of a facility enabling or ensuring such communication.
4. The author's right to communicate the work to the public shall not be exhausted by communicating it to the public as specified in Paragraphs 1 and 2.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Right to Remuneration in Connection with the Rental of an Original or a Reproduction of the Work

Section 25a (applied by a reference in Section 74)

If the author grants a license for the rental of an original or a copy of the work embodied in a phonogram or an audio-visual fixation to the producer of the fixation, the author shall become entitled to adequate remuneration from the person who will be renting out the original or a copy of the work so recorded; the author cannot waive such right.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision.

5.3. Any Other Right to Remuneration

Right to Remuneration in Connection with Reproduction of Work for Personal Use and for Legal Person's Own Internal Use

Section 25 (applied by a reference in Section 74)

1. For works that were made public and may be reproduced:
 - a. for personal use by a natural person or for the own internal use by a legal person or a sole trader (Articles 30 and 30a), using a device for making printed reproductions on paper or other similar base; or
 - b. for personal use by a natural person (Article 30) on the basis of an audio, audiovisual or any other fixation or broadcasting by the transfer thereof by means of a device to blank record carriers, the author is entitled to remuneration in connection with such reproduction of the work.
2. The person liable to pay remuneration pursuant to Paragraph (1) shall be:

- a. the producer of the devices for making reproductions of fixations, importer of such devices from third countries (hereinafter the “importer”) or consignee of such devices from any member state of the European Union or any of the states comprising the European Economic Area (hereinafter the “consignee”);
 - b. the producer, importer or consignee of technical devices for making printed reproductions;
 - c. the producer, importer or consignee of blank record carriers;
 - d. the carrier or forwarder in lieu of the liable person pursuant to Paragraphs (a) to (c), unless that person informed the relevant collective rights manager without undue delay upon written request about the details necessary for the identification of the importer, consignee or producer;
 - e. the provider of paid reproduction services, in the case of printed reproductions; provider of paid reproduction services shall also mean the person who makes available, for a consideration, the device for making printed reproductions.
3. Entitlement to remuneration to be paid by the persons defined in Paragraph (2) (a) to (d) in connection with the reproduction of a work for individual use shall pertain to the author at the time of the import, receiving or first sale of:
 - a. Device for making reproductions of fixations;
 - b. Device for making printed reproductions;
 - c. Blank record carriers.
 4. Entitlement to the remuneration to be paid by the persons defined in Paragraph (2) (b) shall depend on the probable number of devices designated for making print reproductions of works under Article 30a. For the calculation of the amount of the remuneration in respect of the devices designated for making print reproductions, the probable number of these devices is set at 20 %. The remuneration is calculated on the basis of the average price of the device exclusive of the value added tax.
 5. Entitlement to the remuneration to be paid by the persons defined in Paragraph (2) (e) shall depend on the probable number of the print reproductions of works made in accordance with Article 30a. The rules set out in Points 6 and 7 of Annex 1 hereto shall apply to the calculation of remuneration in respect of the print reproductions made.
 6. The persons referred to in Paragraph (2) above shall submit to the relevant collective rights manager – always in summary for half of the calendar year and not later than by the end of the following calendar month – information on the facts relevant for setting the amount of the remuneration, including, but not limited to, information on the type and number of the sold, imported or received devices for making reproductions of fixations, devices for making printed reproductions, and the blank record carriers, and also on the total number of the printed reproductions made by the devices for providing paid reproduction services.

7. The Ministry of Culture (hereinafter the “Ministry”) shall issue a Decree to define the types of devices to make print reproductions and the types of blank record carriers on which a remuneration is to be paid in accordance with Paragraph (1) above and also to define amount of the lump-sum remuneration depending on the type of device for making the printed reproductions and types of blank record carriers. This Decree shall also define types of devices for making reproductions of fixations on which remuneration is to be paid in accordance with Paragraph (1) above; level of this remuneration is indicated in Annex 1 to this Act.
8. Remuneration shall not be paid where the devices referred to in Paragraph (3) (a) and (b) are exported or consigned for resale or where blank record carriers are exported or consigned for resale. Also, remuneration shall not be paid in the case of devices and blank record carriers if these are intended only to be used within the Czech Republic for the reproduction of works on the basis of licence agreements by persons who use them so in the course of their own activities.

Employee work

Section 58 (applied by a reference in Section 74)

6. Unless otherwise agreed, the author of an employee work is entitled to an equitable supplementary remuneration from the employer if the wage or any other compensation paid to the author by the employer is in evident disproportion to the profit from the utilisation of the rights to the employee work and to the importance of such work for the achievement of this profit; this provision shall not apply to works referred to in Paragraph (7), irrespective of whether they are actual employee works or are just considered as such, unless agreed otherwise.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

No such provision.

6.2. Any Other Presumption

Works Used Audiovisually

Section 64, subsection 1 (applied by a reference in Section 74)

1. If the author of a work utilised audiovisually, with the exception of a musical work, has granted the producer of the first fixation of the audiovisual work a written permission to include the work in an audiovisual work, then, unless otherwise agreed, it shall be understood that he has:

- a. granted that producer an authorisation to include the work without alteration or after adaptation or other change into an audiovisual work, and also to make a first fixation of such an audiovisual work, and to dub it and add captions to it;
- b. also granted the producer the exclusive and unrestricted licence to use the work within the utilisation of an audiovisual work, and also to use the photographs created in connection with the making of a first fixation, including also the option of granting an authorisation, which is part of such a licence, in entirety or in part to a third party; and
- c. agreed with the producer on a remuneration in an amount customary at the time of conclusion of the agreement for such type of work on analogous contractual terms.

6.2.2 Presumption on the exercise of rights in employment contracts

Employee work

Section 58 (applied by a reference in Section 74)

1. Unless otherwise agreed, the author's economic rights to a work created by the author in fulfilling his duties arising from the employment or civil service contract with the employer or from an employment relationship between a co-operative and its member (hereinafter referred to as employee work) shall be exercised by the employer in his own name and on his own account. The employer may only assign the exercise of the right pursuant to this paragraph to a third party with the author's consent, unless this occurs when an undertaking or any part thereof is being sold.
- 2.) In the event of the death or dissolution of the employer who has been authorised to exercise the economic rights to an employee work and who has no successor in title, the authorisation to exercise these rights shall be acquired by the author.
3. Where the employer does not at all exercise the economic rights to an employee work, or exercises them inadequately, the author may request the employer to grant him the licence under normal conditions, unless there is a serious reason on the part of the employer to decline from doing so.
4. The author's moral rights to an employee work shall remain unaffected. Where the employer exercises the economic rights to an employee work it shall be deemed that the author has given his consent to the work's being made public, altered, adapted (including translation), combined with another work, included into a collection of works and, unless agreed otherwise, also presented to the public under the employer's name.
5. Unless otherwise agreed, it shall be deemed that the author has given the employer his consent to complete his unfinished employee work in the case that his employment contract expires sooner than the work is completed, as well as

- in the case of justified concerns that the employee will be unable to complete the work duly and timely in accordance with the employer's needs.
6. Unless otherwise agreed, the author of an employee work is entitled to an equitable supplementary remuneration from the employer if the wage or any other compensation paid to the author by the employer is in evident disproportion to the profit from the utilisation of the rights to the employee work and to the importance of such work for the achievement of this profit; this provision shall not apply to works referred to in Paragraph (7), irrespective of whether they are actual employee works or are just considered as such, unless agreed otherwise.
 7. Computer programs and databases, as well as cartographic works that are not collective works, shall also be deemed employee works where they have been created by the author to order; the person who ordered them shall in such case be considered an employer. The provisions of Article 61 shall not apply to such works.
 8. The rights and obligations under Paragraphs (1) to (6) shall remain unaffected upon the termination of the contractual relation referred to in Paragraph (1) or Paragraph (7).
 9. In the case of agency employment^{4d)}, the employer for whom the recruitment agency employee temporarily works under employment contract or contract for work shall be deemed to be the employer for the purposes of this provision, unless otherwise agreed between the recruitment agency and such an employer.
 10. Provisions of Paragraphs (1) to (6) and Paragraph (8) shall apply, *mutatis mutandis*, to the works created to fulfil the obligations based on the relationships between a company and an author who himself is the company's statutory body or is a member of a statutory or any other body of a company, or member in a public limited company, or unlimited partner in a limited partnership^{4e)}; in such a case, the company is considered to be the employer. The previous sentence shall apply, *mutatis mutandis*, to other legal persons and other authors who are their statutory bodies or members of statutory bodies. Provisions of Article 61 do not apply to the works created in accordance with this Paragraph.

4d) Labour Code.

4e) Section 66 (2) of the Commercial Code.

7. Transfer of Rights

Common Provisions for Economic Rights

Section 26 (applied by a reference in Section 74)

1. Economic rights may not be waived by the author; such rights are not transferable and are not subject to the execution of a decision; this provision shall not apply to claims arising from such economic rights.
2. Economic rights are inheritable. Where the economic rights to the work are inherited by more than one heir, their mutual relations to the work shall be governed, *mutatis mutandis*, by Article 8 (3) and (4). If such economic rights are inherited by the State or the economic rights escheat to the State, then such rights shall be exercised by the State Fund of Culture of the Czech Republic²⁾ in its own name, and, in the case of audiovisual works, by the State Cinematography Fund.³⁾ The income of the State from the exercise of the economic rights, as exercised by the mentioned state funds, shall be treated as the revenue of those state funds.
3. In the event of termination of the legal existence of a legal person that inherited the economic rights to a work, and there is no successor in title, such rights shall escheat to the State. Provisions of Paragraph 2, second and third sentence, shall apply *mutatis mutandis*.
4. The provisions of this Act concerning the author shall also apply to his heirs, or to the state, if the inheritance escheats to it according to Paragraphs 2 and 3, unless nature of such provisions indicates otherwise.

Moral Rights

Section 11, subsections 4,5 (applied by a reference in Section 74)

4. The author may not waive his moral rights; these rights are non-transferable and shall become extinct on the death of the author. This shall be without prejudice to the provision of Paragraph (5) below.
5. After the death of the author no one may arrogate authorship of the work; the work may only be used in a way which shall not detract from its value and, unless the work is an anonymous work, the name of the author must be indicated, provided that such shall be a normal practice. Protection may be claimed by any of the author's kin,^{1a} who shall retain such entitlement even if the protection of the copyright-related economic rights expired. Such protection may at any time also be claimed by legal persons associating authors or by the relevant collective rights manager hereunder (Article 97).

2) Act No.239/1992 Coll., on the State Fund of Culture of the Czech Republic

3) Act No. 496/2012 Coll., on Audiovisual Works and Promotion of Cinematography and Amendments to Certain Acts (Audiovisual Act).

1a) Article 116 of the Civil Code.

8 Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Estonia

copyright Act¹⁴

Elements

1. Framework Provisions

1.1. Definitions

Section 64: Definition of performer

1.2. National Treatment

2. Moral Rights

2.1 Paternity right

Section 66, first sentence, subparagraphs 1, 2 (RT I 1999, 97, 859)

2.2 Integrity right

Section 66, first sentence, subparagraphs 3, 4 (RT I 1999, 97, 859)

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 67 (RT I, 06.01.2011, 1), subsection 2, subparagraph 1

3.2. Broadcasting and Communication to the Public

Section 67 (RT I, 06.01.2011, 1), subsection 2, subparagraphs 2 and 3

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 67, subsection 2, subparagraph 5 (RT I, 06.01.2011, 1)

4.2. Right of Distribution

Section 67, subsection 2, subparagraph 6 (RT I, 06.01.2011, 1)

Section 62, subsection 3 (RT I, 06.01.2011)

4.3. Right of Rental (and lending)

Section 67, subsection 2, subparagraph 7 (RT I, 06.01.2011, 1)

4.4. Right of Making Available to the Public of Fixed Performances

Section 67, subsection 2, subparagraph 3 (RT I, 06.01.2011, 1)

4.5. Right of Broadcasting

- No such provision.

¹⁴ Based on Copyright Act (RT 1992, 49, 615), with subsequent amendments, latest of 15 October, 2014 (in force since 30 October, 2014). Translation October, 2014.

4.6. Right of Communication to the Public

- No such provision.

4.7. Right of Public Performance

- No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

Section 67, subsection 2, subparagraph 4 (RTI, 06.01.2011, 1),

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 68, subsection 4 (RTI 2004, 71, 500)

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- No such provision.

5.3. Any Other Right to Remuneration

Lending of work and sound recording of work out from libraries

Section 13, subsection 1 (RTI 2008, 18, 123)

Private use of audiovisual works and sound recordings of works

Section 26 (RTI 1999, 97, 859)

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 67, subsection 2, subparagraph 7 (RTI, 06.01.2011, 1)

6.2. Any Other Presumption

Authorisation to use performance

Section 68, subsection 3, subparagraphs 1, 2, 3 (RTI, 14.06.2013, 1)

7. Transfer of Rights

Section 62, subsection 5 (RTI, 06.01.2011)

Section 67, subsections 3, 5 (RTI, 06.01.2011)

Section 68, subsections 1, 2, 8 (RTI, 14.06.2013, 1)

8 Additional Information (if available)

8.1. Applicability

Validity of related rights

Section 63, subsection 1 (RTI, 06.01.2011)

Protection of works and results of work of performers, producers of phonograms or broadcasting service providers created before entry into force of this Act

Section 88, subsection 1 (RTI, 06.01.2011)

8.2. Limitations

Section 75 (RTI, 06.01.2011, 1)

8.3. Other Possible Specificities

Provisions of Copyright Act, Estonia

1. Framework Provisions

1.1. Definitions

Definition of performer

Section 64

For the purposes of this Act, “performer” means an actor, singer, musician, dancer or another person or groups of persons who acts, sings, declaims, plays on an instrument or in any other manner performs literary or artistic works or works of folklore or supervises other persons upon the performance of works, or a person who performs in variety shows, circuses, puppet theatres, etc.

1.2. National Treatment

2. Moral Rights

2.1. Paternity Right

Moral rights of performers

Section 66, first sentence, subparagraphs 1, 2 (RT I 1999, 97, 859)¹⁵

A performer shall enjoy the following rights:

1. right of authorship of the performance;
2. right to a stage name;

2.2. Integrity Right

Moral rights of performers

Section 66, first sentence, subparagraphs 3, 4 (RT I 1999, 97, 859)¹⁶

A performer shall enjoy the following rights:

3. right of inviolability of the performance;
4. right of protection of the performer’s honour and reputation with respect to the performer’s performance.

¹⁵ The authorship and stage name of a performer as well as the honor and reputation of the performer are protected without a term; Section 74, subsection 4.

¹⁶ The authorship and stage name of a performer as well as the honor and reputation of the performer are protected without a term; Section 74, subsection 4.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 67, subsection 2, subparagraph 1 (RTI, 06.01.2011, 1)

2. The following is permitted only with the consent of the performer:
 - 1) recording a performance which has previously not been fixed onto a record, audio or video tape, on film or in another manner

3.2. Broadcasting and Communication to the Public

Section 67, subsection 2, subparagraphs 2, 3 (RTI, 06.01.2011, 1)

2. The following is permitted only with the consent of the performer:
 - 2) the broadcasting of performances by radio, television or satellite, except in the cases where a recording of the performance is broadcast or the performance is retransmitted with the permission of the broadcasting service provider which first broadcast the performance;
 - 3) directing of a performance at the public by whichever technical means outside the location of the performance except in the cases where a recording of the performance is communicated to the public or the performance is directed at the public by means of radio or television;

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 67, subsection 2, subparagraph 5 (RTI, 06.01.2011, 1)

2. The following is permitted only with the consent of the performer:
 - 5) the direct or indirect, temporary or permanent, partial or total reproduction of the recording of a performance in any form or by any means;

4.2. Right of Distribution

Section 67, subsection 2, subparagraph 6 (RTI, 06.01.2011, 1)

2. The following is permitted only with the consent of the performer:
 - 6) the distribution of recordings to the public;

Section 62, subsection 3 (RTI, 06.01.2011)

3. For the purposes of this Chapter, “distribution” means the making available to the public of originals or copies of the object of related rights by sale or by transfer of the right of ownership in any other manner.

4.3. Right of Rental (and lending)

Section 67, subsection 2, subparagraph 7 (RTI, 06.01.2011, 1)

2. The following is permitted only with the consent of the performer:
 - 7) the rental and lending of the recording of a performance. The rental right shall transfer to the producer of an audiovisual work (subsection 33 (3)) upon the conclusion of a corresponding individual or collective contract for the creation of an audiovisual work unless otherwise prescribed by contract. The performer shall retain the right to obtain equitable remuneration (subsection 68 (4)).

4.4. Right of Making Available to the Public of Fixed Performances

Section 67, subsection 2, subparagraph 3¹ (RTI, 06.01.2011, 1)

2. The following is permitted only with the consent of the performer:
 - 3¹) making the recording of a performance available to the public in such a way that persons may access the performance from a place and at a time individually chosen by them;

4.5. Right of Broadcasting

No such provision¹⁷

4.6. Right of Communication to the Public

No such provision.¹⁸

4.7. Right of Public Performance

No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

Section 67, subsection 2, subparagraph 4 (RTI, 06.01.2011, 1)

2. The following is permitted only with the consent of the performer:

¹⁷ The broadcasting of recordings of performances by radio, television or satellite is permitted without the consent of the performer. In addition, retransmission is permitted with the permission of the broadcasting service provider which first broadcast the performance; Section 67, subsection 2(2).

¹⁸ Communication of a recording of the performance to the public is permitted without the permission of the performer; Section 67, subsection 2(3).

- 4) use of the sound and image of the performance separately if they are recorded together and form a single whole;

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 68, subsection 4¹⁹ (RTI 2004, 71, 500)

4. Where a performer has transferred (assigned) the right to rent the original or a copy of a phonogram or audiovisual work or has granted a licence therefore, or such transfer or grant of a licence may be presumed, the performer shall retain the right to obtain equitable remuneration for the rental. An agreement to waive the right to obtain equitable remuneration is void.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision

5.3. Any Other Right to Remuneration

Section 13³, subsection 1 (RTI 2008, 18, 123)

1. A library has the right to lend out a work and a sound recording of a work without the consent of the author, performer or producer of phonograms, but they are entitled to receive remuneration for such lending out. Lending out an audiovisual work is permitted only in case the producer of the first fixation of a film has granted a respective authorisation.

Section 26 (RTI 1999, 97, 859)

1. Audiovisual works or sound recordings of such works may be reproduced for the private use (scientific research, studies, etc.) of the user without the authorisation of the author. The author as well as the performer of the work and the producer of phonograms have the right to obtain equitable remuneration for such use of the work or phonogram (§ 27).
2. Subsection (1) of this section does not apply to legal persons.

¹⁹ See also Section 67, subsection 2(7): “- - The rental right shall transfer to the producer of an audiovisual work - - upon the conclusion of a corresponding individual or collective contract for the creation of an audiovisual work unless otherwise prescribed by contract. The performer shall retain the right to obtain equitable remuneration.”

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 67, subsection 2, subparagraph 7 (RTI, 06.01.2011, 1)

2. The following is permitted only with the consent of the performer:
 - 7) the rental and lending of the recording of a performance. The rental right shall transfer to the producer of an audiovisual work (subsection 33 (3)) upon the conclusion of a corresponding individual or collective contract for the creation of an audiovisual work unless otherwise prescribed by contract. The performer shall retain the right to obtain equitable remuneration (subsection 68 (4)).

6.2. Any Other Presumption

Authorisation to use performance

Section 68, subsection 3, subparagraphs 1, 2, 3 (RTI, 14.06.2013, 1)

3. Unless otherwise prescribed by contract:
 - 1) an authorisation to broadcast the performance of a work on radio or television does not grant the broadcasting service provider the right to record the performance or grant an authorisation to broadcast the work to other organisations;
 - 2) an authorisation to broadcast the performance of a work on radio or television and to fix the performance does not grant the broadcasting service provider the right to reproduce the recording;
 - 3) an authorisation to record the performance of a work and to reproduce the recording does not grant the right to broadcast such recording or a copy thereof on radio or television.

7. Transfer of Rights

Section 62, subsection 5 (RTI, 06.01.2011)

5. A performer, producer of phonograms, broadcasting service provider, producer of the first fixation of a film, a person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, and a person who publishes a critical or scientific publication of a work not protected by copyright may transfer (assign) the economic rights provided for in this Chapter or grant an authorisation (licence) for the use of the object of related rights.

Section 67, subsections 3, 5 (RTI, 06.01.2011, 1)

3. The performer of a work may exercise the rights set out in subsection (2) of this section independently or through a collective management organisation.
5. Upon performance of a work in the execution of direct duties, the economic rights of the performer are transferred to the employer only on the basis of a written agreement of the parties.

Authorisation to use performance

Section 68, subsections 1, 2, 8 (RTI, 14.06.2013, 1)

1. A prior written consent of the performer is required for the use of a performance.
2. In order to use a work performed by a group of persons, the consent of all members of the group is required. The leader of an ensemble, a conductor, leader of a choir, director or another person authorised by the group of persons may grant an authorisation in the name of the group.
8. An agreement for waiver of the right to cancel the agreement for assignment or transfer is void.

8. Additional Information

8.1. Applicability

Validity of related rights

Section 63, subsection 1 (RTI, 06.01.2011)

1. The provisions of this Chapter apply in respect of a performer if:
 - 1) the performer is a citizen or a permanent resident of the Republic of Estonia;
 - 2) the work is performed (produced) in the territory of the Republic of Estonia; or
 - 3) the performance (production) of the work is recorded on a phonogram which is protected pursuant to subsection (2) of this section; or
 - 4) the performance (production) of the work which is not recorded on a phonogram is included in a radio or television programme which is protected pursuant to subsection (3) of this section.

Protection of works and results of work of performers, producers of phonograms or broadcasting service providers created before entry into force of this Act

Section 88, subsection 1 (RTI, 06.01.2011, 1)

1. This Act also extends to works and results of the work of performers, producers of phonograms or broadcasting service providers which are created before 12 December 1992.

8.2. Limitations

Limitation of related rights

Section 75 (RTI, 06.01.2011, 1)

1. Without the authorisation of a performer, producer of phonograms, broadcasting service provider, producer of the first fixation of a film and a person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully directs at the public a previously unpublished work or of a person who publishes a critical or scientific publication of a work unprotected by copyright, and without payment of remuneration, it is permitted to use the performance, phonogram, radio or television broadcast or recordings thereof, or the film, including by reproduction:
 - 1) for private use by natural persons, taking account of the provisions of §§ 26 and 27 of this Act and on condition that such reproduction is not carried out for commercial purposes;
 - 2) for the purpose of illustration for teaching or scientific research to the extent justified by the purpose and on condition that such use is not carried out for commercial purposes and on condition that the source is indicated, if possible;
 - 3) if short excerpts are used in connection with the reporting of current events to the extent justified by the informational purposes to be achieved and on condition that the source is indicated, if possible;
 - 4) if short excerpts (quotations) from an object of related rights which is lawfully published are used for informational purposes and to the extent justified by the informational purposes to be achieved and the obligation to convey the meaning of the whole performance, phonogram, radio or TV broadcast or film accurately is observed and on condition that the source is indicated, if possible;
 - 5) for an ephemeral recording of the performance, broadcast or phonogram by a broadcasting service provider and for reproduction thereof by means of its own facilities and for the purpose of its own broadcasts, provided that the broadcasting service provider has received an authorisation to broadcast the performance, broadcast or phonogram from the rightholder beforehand or the transmission or retransmission of the performance, broadcast or phonogram by the broadcasting service provider is lawful on another basis. Such recordings and reproduction thereof (copies) shall be destroyed after thirty days from their making, except for one copy which may be preserved as an archive copy under the conditions set out in subsection 23 (3) of this Act;

- 6) in other cases where the rights of authors of works are limited pursuant to Chapter IV of this Act.²⁰
2. The free use prescribed in this section is permitted only on the condition that that this does not conflict with normal use and does not unreasonably harm the legitimate interests of holders of related rights.

8.3. Other Possible Specificities

²⁰ It may be deemed that the following provisions are applicable to audiovisual performances:

Section 13: Lending of work and sound recording of work out from libraries

Section 18 : Restriction of author's right to reproduce

Section 19: Free use of works for scientific, educational, informational and judicial purposes

Section 20: Free use of works by public archives, museums or libraries

Section 22: Free public performance of works in the direct teaching process in educational institutions

Section 23: Use of ephemeral recordings of works by broadcasters

Section 26: Private use of audiovisual works and sound recordings of works

France

Intellectual Property Code²¹

Elements

1. Framework Provisions

1.1. Definitions

Section L212-1: Definition of performer

1.2. National Treatment

2. Moral Rights

2.1 Paternity Right

Section L212-2

2.2. Integrity Right

Section L212-2

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section L212-3

3.2. Broadcasting and Communication to the Public

Section L212-3

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section L212-3

4.2. Right of Distribution

- Potentially part of Section L212-3; see footnote 20 below

4.3. Right of Rental (and lending)

- Potentially part of Section L212-3; see footnote 20 below

4.4. Right of Making Available to the Public of Fixed Performances

- Interpreted as part of Section L212-3; see footnotes 20 and 22 below

4.5. Right of Broadcasting

- Interpreted as part of Section L212-3; see footnote 20 below

4.6. Right of Communication to the Public

21 Intellectual Property Code (consolidated version of March 2, 2006) is available in English at <http://www.wipo.int/wipolex/en/details.jsp?id=14446>

The consolidated version of February 23, 2015 is available in in French at <http://www.wipo.int/wipolex/en/details.jsp?id=14664>

- Part of Section L212-3; see footnote 20 below
- 4.7. Right of Public Performance
 - Potentially part of Section L212-3; see footnote 20 below
- 4.8. Any Other Exclusive Right Concerning Fixed Performances
 - Right to authorize any separate use of the sounds or images of his performance Section L212-3

5. Rights to Remuneration

- 5.1. Right to Remuneration for Rental of a Copy of a Film
 - No such provision.
- 5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film
 - No such provision.
- 5.3. Any Other Right to Remuneration
 - Remuneration for each mode of exploitation of the work**
 - Sections from L212-4 to L212-9*
 - Remuneration for private copying**
 - Sections L311-1 and 311-7*

6. Presumptions (unless otherwise agreed)

- 6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)
 - No such provision.
- 6.2. Any Other Presumption
 - Section L212-4 (The signature of a contract between the performer and a producer for the making of an audiovisual work shall imply the authorization to fix, reproduce and communicate to the public the performance of the performer.)*

7. Transfer of Rights

- "The protection is made subject to labor law, which means that these rights may be assigned in individual employment agreements or in collective labor agreements." (Salokannel 2003)

8. Additional Information (if available)

- 8.1. Applicability
- 8.2. Limitations
 - Section L217-2: Right to authorize the simultaneous, complete and unchanged cable retransmission can be exercised only by royalty collection and distribution*
 - Section L212-10: Performer cannot prohibit reproduction and public communication of performance if it is accessory to an event that constitutes the main subject of a sequence within a work or an audiovisual document*
- 8.3. Other Possible Specificities

Provisions of the Intellectual Property Code, France

1. Framework provisions

1.1. Definitions

1.1.1 Definition of performer

Section L212-1

Save for ancillary performers, considered such by professional practice, performers shall be those persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works, variety, circus or puppet acts.

2. Moral Rights

2.1 Paternity Right

Section L212-2

A performer shall have the right to respect for his name, his capacity and his performance. This inalienable and imprescriptible right shall attach to his person. It may be transmitted to his heirs in order to protect his performance and his memory after his death.

2.2 Integrity Right

Section L212-2

A performer shall have the right to respect for his name, his capacity and his performance. This inalienable and imprescriptible right shall attach to his person. It may be transmitted to his heirs in order to protect his performance and his memory after his death.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section L212-3

The performer's written authorization shall be required for fixation of his performance, its reproduction and communication to the public as also for any separate use of the sounds or images of his performance where both the sounds and images have been fixed.²²

Such authorization and the remuneration resulting there from shall be governed by Articles L762-1 and L762-2 of the Labor Code, subject to Article L212-6 of this Code.²³

Section L212-3 (in French)

Sont soumises à l'autorisation écrite de l'artiste-interprète la fixation de sa prestation, sa reproduction et sa communication au public, ainsi que toute utilisation séparée du son et de l'image de la prestation lorsque celle-ci a été fixée à la fois pour le son et l'image.

Cette autorisation et les rémunérations auxquelles elle donne lieu sont régies par les dispositions des articles L. 762-1 et L. 762-2 du code du travail, sous réserve des dispositions de l'article L. 212-6 du présent code.

22 Interpretation for the term "communication" in Section L212-3 may be sought from Section L122-2 which is applicable to copyright proper, and in which the term has been defined and used to qualify the term "representation". Article L122-2 reads as follows: La représentation consiste dans la communication de l'oeuvre au public par un procédé quelconque, et notamment : 1° Par récitation publique, exécution lyrique, représentation dramatique, présentation publique, projection publique et transmission dans un lieu public de l'oeuvre télédiffusée ; 2° Par télédiffusion.

23 **Section L762-1 (Labor Code)** (Legifrance, translated with Google Translator): Any contract by which a person or entity ensures, for payment, the assistance of an entertainer for its production, is presumed to be an employment contract provided that that artist does not exercise the activity, subject of the contract under conditions involving its entry in the commercial register.

This presumption remains whatever the method and amount of remuneration, as well as the qualification given by the parties to the contract. It is not destroyed by evidence that the artist retains freedom of expression of his art, he owns all or part of the material used or employed by itself to a person or persons assist him, since he personally participated in the show.

This presumption of salaried does not apply to artists recognized as service providers established in a Member State of the European Community or in another State party to the Agreement on the European Economic Area where they usually provide similar services and who just carry on business in France, by way of the provision of services on a temporary and independently.

Are considered performers, including opera singer, dramatic artists, choreographic artists, variety artist, musician, songwriter, ancillary performers, conductor, arranger -orchestrateur and for the physical execution of their artistic design, the director.

The employment contract must be individual. However, it may be common to many artists when it relates to artists performing in the same issue or musicians in the same orchestra.

The Section is available at <http://www.legifrance.gouv.fr/affichCodeArticle.do?cidTexte=LEGITEXT000006072050&i-dArticle=LEGIARTI000006650643&dateTexte=&categorieLien=cid>

3.2. Broadcasting and Communication to the Public

Section L212-3

The performer's written authorization shall be required for fixation of his performance, its reproduction and communication to the public as also for any separate use of the sounds or images of his performance where both the sounds and images have been fixed.

Such authorization and the remuneration resulting there from shall be governed by Articles L762-1 and L762-2 of the Labor Code, subject to Article L212-6 of this Code

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section L212-3

The performer's written authorization shall be required for fixation of his performance, its reproduction and communication to the public as also for any separate use of the sounds or images of his performance where both the sounds and images have been fixed.

Such authorization and the remuneration resulting there from shall be governed by Articles L762-1 and L762-2 of the Labor Code, subject to Article L212-6 of this Code

4.2. Right of Distribution

Potentially part of Section L212-3.

4.3. Right of Rental (and lending)

Potentially part of Section L212-3.

4.4. Right of Making Available to the Public of Fixed Performances

Interpreted as part of Section L212-3²⁴.

24 "The French legislator did not mention the making available right explicitly, since article L212-3 CPI was thought broad enough by the French government and parliament to include this right as well. Accordingly, before the law was amended, French jurisprudence already considered that "the making available to the public through a network", such as the Internet, is considered to be a communication to the public." Source: Performers' Rights in International and European Legislation. Aepo Artis, 2014. Page 41. The study is available at <http://www.aepo-artis.org/usr/AEPO-ARTIS%20Studies/AEPO-ARTIS-study-on-performers-rights-1-December-2014-FINAL.pdf>. Visited on 29.4.2016

4.5. Right of Broadcasting

Potentially part of Section L212-3.

4.6. Right of Communication to the Public

Potentially part of:

Section L212-3

The performer's written authorization shall be required for fixation of his performance, its reproduction and communication to the public as also for any separate use of the sounds or images of his performance where both the sounds and images have been fixed.

Such authorization and the remuneration resulting there from shall be governed by Articles L762-1 and L762-2 of the Labor Code, subject to Article L212-6 of this Code

4.7. Right of Public Performance

No such provision; potentially part of Section L212-3.

4.8. Any Other Exclusive Right Concerning Fixed Performances

Right to authorize any separate use of the sounds or images of his performance

Section L212-3

The performer's written authorization shall be required for fixation of his performance, its reproduction and communication to the public as also for any separate use of the sounds or images of his performance where both the sounds and images have been fixed.

Such authorization and the remuneration resulting there from shall be governed by Articles L762-1 and L762-2 of the Labor Code, subject to Article L212-6 of this Code

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

No such provision.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision.

5.3. Any Other Right to Remuneration

Remuneration for each mode of exploitation of the work

Section L212-4

The signature of a contract between the performer and a producer for the making of an audiovisual work shall imply the authorization to fix, reproduce and communicate to the public the performance of the performer.

Such contract shall lay down separate remuneration for each mode of exploitation of the work.

Section L212-5

Where neither a contract nor a collective agreement mention the remuneration for one or more modes of exploitation, the amount of such remuneration shall be determined by reference to the schedules established under specific agreements concluded, in each sector of activity, between the employees' and employers' organizations representing the profession.

Section L212-6

Article L762-2 of the Labor Code²⁵ shall only apply to that part of the remuneration paid in accordance with the contract that exceeds the bases laid down in the collective agreement or specific agreement.

Section L212-7

Contracts concluded prior to January 1, 1986, between a performer and a producer of audiovisual works or their assignees shall be subject to the preceding provisions in respect of those modes of exploitation which they excluded. The corresponding remuneration shall not constitute a salary.

Section L212-8

The provisions of the agreements referred to in the preceding Articles may be made compulsory within each sector of activity for all the parties concerned by order of the responsible Minister.

Section L212-9

Failing agreement concluded in accordance with Articles L212-4 to L212-7, either prior to January 4, 1986, or at the date of expiry of the preceding agreement, the types and bases

²⁵ Section 762-2 (Labor Code) (Legifrance, translated with Google Translator): Is not considered wages [* no *] the remuneration payable to the artist on the occasion of the sale or operation of the recording of its interpretation, performance or presentation by the employer or any other user as soon as the physical presence of the artist is no longer required for operating said recording and that this remuneration is in no way based on the salary received for the production of its interpretation, execution or presentation, but instead the function of the product sale or operation of such registration. The Section is available at <http://www.legifrance.gouv.fr/affichCodeArticle.do?cid-Texte=LEGITEXT000006072050&idArticle=LEGIARTI000006650644&dateTexte=&categorieLien=cid>

of remuneration for the performers shall be determined, for each sector of activity, by a committee chaired by a magistrate of the judiciary designated by the First President of the Cour de Cassation and composed, in addition, of one member of the Conseil d'Etat designated by the Vice President of the Conseil d'Etat, one qualified person designated by the Minister responsible for culture and an equal number of representatives of the employees' organizations and representatives of the employers' organizations. The Committee shall take its decisions on a majority of the members present. In the event of equally divided voting, the Chairman shall have a casting vote. The Committee shall decide within three months of the expiry of the time limit laid down in the first paragraph of this Article. Its decision shall have effect for a duration of three years, unless the parties concerned reach an agreement prior to that date.

Remuneration for private copying

Section L311-1

The authors and performers of works fixed on phonograms or videograms and the producers of such phonograms or videograms shall be entitled to remuneration for the reproduction of those works made in accordance with item 2 of Article L122-5 and item 2 of Article L211-3.²⁶

The authors and publishers of works fixed on any other medium are also entitled to remuneration for the reproduction of those works made in accordance with item 2 of Article L122-5 and item 2 of Article L211-3, on a digital recording medium.

Section L311-7

subsection 2

2. The remuneration for private copying of videograms shall belong in equal parts to the authors within the meaning of this Code, the performers and the producers

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

No such provision.

²⁶ Private use.

6.2. Any Other Presumption

Section L212-4

The signature of a contract between the performer and a producer for the making of an audiovisual work shall imply the authorization to fix, reproduce and communicate to the public the performance of the performer.

7. Transfer of Rights

"The protection is made subject to labor law, which means that these rights may be assigned in individual employment agreements or in collective labor agreements."²⁷

8. Additional Information

8.1. Applicability

8.2. Limitations

Section L217-2

1. Where it is provided for in this Code, the right to authorize the simultaneous, complete and unchanged cable retransmission, on the national territory, of a performer's performance, a phonogram or a videogram broadcast from a Member State of the European Community may only be exercised, as from the date of the entry into force of Act No. 97-283 of March 27, 1997, by a royalty collection and distribution. If the society in question is governed by Title II of Book III, it must be approved for the purpose by the Minister responsible for culture.

Where the owner of the rights has not entrusted their management to a royalty collection and distribution society, he shall designate that to which he entrusts the exercise thereof. He shall notify the designation in writing to the society, which may not refuse it.

The contract authorizing the broadcasting on the national territory of a performer's performance, a phonogram or a videogram shall mention the society, if any, responsible for exercising the right to authorize the simultaneous, complete and unchanged cable retransmission thereof in the Member States of the European Community.

The approval provided for in the first paragraph shall be granted in consideration of the criteria listed in Article L132-20-1.

²⁷ Source: Salokannel, Marjut (2003). Study on Audiovisual Performers' Contracts and Remuneration Practices in France and Germany. Ad Hoc Informal Meeting on the Protection of Audiovisual Performances at WIPO. The study is available at http://www.wipo.int/edocs/mdocs/copyright/en/avp_im_03/avp_im_03_3b.pdf. Visited on 29.4.2016.

A Conseil d'Etat decree shall lay down the conditions for the grant and revocation of approval. It shall also, in the case provided for in the second paragraph, lay down the procedure for the designation of the society responsible for the management of the right of retransmission.

Section L212-10

Performers may not prohibit the reproduction and public communication of their performance if it is accessory to an event that constitutes the main subject of a sequence within a work or an audiovisual document.

8.3. Other Possible Specificities

Germany

act on Copyright and Related Rights²⁸

Elements

1. Framework Provisions

1.1. Definitions

Section 73: Definition of performer

1.2. National Treatment

2. Moral Rights

2.1. Paternity Right

Section 74

Section 93, subsection 2

2.2. Integrity Right

Section 75

Section 93, subsection 1

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 77, subsection 1

3.2. Broadcasting and Communication to the Public

Section 78, subsection 1, subparagraphs 2, 3

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 77, subsection 2

4.2. Right of Distribution

Section 77, subsection 2

Section 17, subsection 3, subparagraph 2 (applied by a reference in section 27 (2))

4.3. Right of Rental

Section 77, subsection 2

Section 27 (applied by a reference in Section 77 (2))

²⁸ English translation of the act by the Federal Ministry of Justice in cooperation with juris GmbH includes the amendment(s) to the Act by Article 8 of the Act of 1.10.2013). The translation is available at https://www.gesetze-im-internet.de/englisch_urhg/index.html

An official version of the Act is available in German at <https://www.gesetze-im-internet.de/urhg/BJNR012730965.html>

4.4. Right of Making Available to the Public of Fixed Performances

Section 78, subsection 1, subparagraph 1

4.5. Right of Broadcasting

- No such provision.

4.6. Right of Communication to the Public

Special case of "communication", Section 78, subsection 1, subparagraph 3

4.7. Right of Public Performance

- No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 27 (applied by a reference in section 77 (2))

5.2. Right to Remuneration for Communication to the Public or Broadcasting of a Film

Section 78, subsection 2, subsection 1

5.3. Any Other Right to Remuneration

Public Performance and Communication to the public

Section 78, subsection 2, subparagraph 2 and 3

Equitable remuneration (for the granting of exploitation rights)

Section 32 (applied by a reference in Section 79)

Cable retransmission

Section 20b (applied by a reference in section 78 (4))

Obligation to pay remuneration (private copying)

Section 54

Section 54h

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

- No such provision

6.2. Any Other Presumption

Section 92, subsections 1, 2: By concluding a contract with a film producer, the performer grants the rights of fixation, reproduction, distribution, broadcasting and making available to the public

7. Transfer of Rights

Exploitation rights

Section 79, subsections 1, 2

Transfer of exploitation rights

Section 34 (applied by a reference in section 79 (2))

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Author's further participation

– Section 32a (applied by a reference in a section 79 (2))

Provisions of the Act on Copyright and Related Rights, Germany

1. Framework Provisions

1.1. Definitions

1.1.1 Definition of performer

Performer

Section 73

For the purposes of this Act, performer shall mean a person who performs, sings, acts or in another manner presents a work or an expression of popular art or who participates artistically in such a presentation.

2. Moral Rights

2.1 Paternity Right

Recognition as a performer

Section 74

1. The performer shall have the right in relation to his performance to be recognised as such. He may thereby determine whether and with which name he identifies himself.
2. If a work is performed by several performers together, and if identifying each of them individually requires a disproportionate amount of effort, they may only require to be named as a group of artists. If the group of artists has an elected representative, the latter shall be the sole representative in respect of third parties. If a group has no such representative, the right may only be asserted by the leader of the group, and if there is none, only by a representative to be elected by the group. The right of a participating performer to be individually named shall remain unaffected in the case of a special interest.
3. Article 10 (1) shall apply mutatis mutandis.

Protection against distortion; claim to identification

Section 93, subsection 2

2. The identification of each individual performer participating in a film shall not be necessary if it requires a disproportionate amount of effort.

2.2 Integrity Right

Derogatory treatment of the performance

Section 75

A performer shall have the right to prohibit any distortion or other derogatory treatment of his performance of such nature as to jeopardise his standing or reputation as a performer. If a work is performed by several performers together, each performer shall take the others into due account when exercising the right.

Protection against distortion; claim to identification

Section 93, subsection 1

1. The authors of a cinematographic work and of works used in its production, and the holders of related rights who participate in the production of the cinematographic work or whose contributions are used in its production may prohibit, in accordance with Articles 14 and 75, only gross distortions or other gross derogatory treatment of their works or their contributions with respect to the production and exploitation of the cinematographic work. Each author or rightholder shall take the others and the film producer into due account when exercising the right.

3. Live performances – Exclusive rights

3.1 Right of Fixation

Recording, reproduction and distribution

Section 77, subsection 1

1. The performer shall have the exclusive right to fix his performance on a video or audio recording medium.

3.2. Broadcasting and Communication to the Public

Communication to the public

Section 78, subsection 1, subparagraphs 2, 3

1. The performer shall have the exclusive right to
 - 2) broadcast his performance, unless the performance has been legally fixed on video or audio recording mediums which have been released or legally made available to the public
 - 3) make his performance perceivable to the public by screen, loudspeaker or similar technical devices in a place other than that in which the live rendering takes place.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Recording, reproduction and distribution

Section 77, subsection 2

2. The performer shall have the exclusive right to reproduce and distribute the video or audio recording medium on which his performance has been fixed. Article 27 shall apply mutatis mutandis.

4.2. Right of Distribution

Recording, reproduction and distribution

Section 77, subsection 2

2. The performer shall have the exclusive right to reproduce and distribute the video or audio recording medium on which his performance has been fixed. Article 27 shall apply mutatis mutandis.

Right of distribution

Section 17, subsection 3, subparagraph 2 (applied by a reference in section 27 (2))

3. Rental within the meaning of the provisions of this Act is the time-limited transfer for use which directly or indirectly serves profit-making purposes. However, rental shall not include the transfer of originals or copies
 - 2) used in the context of an employment or service relationship for the exclusive purpose of fulfilling obligations resulting from the employment or service relationship

4.3. Right of Rental

Recording, reproduction and distribution

Section 77, subsection 2

2. The performer shall have the exclusive right to reproduce and distribute the video or audio recording medium on which his performance has been fixed. Article 27 shall apply mutatis mutandis.

Remuneration for rental and lending

Section 27

1. Where the author has granted rental rights (Article 17) in respect of a video or audio recording to the producer of the audio recording or of a film, the lessor shall nevertheless pay the author an equitable remuneration for the rental. The claim for remuneration may not be waived. It may be assigned in advance only to a collecting society.

2. The author shall be paid an equitable remuneration for the lending of those originals or copies of a work whose dissemination is permissible according to Article 17 (2) if the originals or copies are lent through a publicly accessible institution (library, collection of video or audio recordings or other originals or copies thereof). Lending within the meaning of the first sentence is the time-limited transfer for use which neither directly nor indirectly serves profit-making purposes; Article 17 (3), second sentence, shall apply mutatis mutandis.
3. The claims for remuneration under paragraphs (1) and (2) may be asserted only through a collecting society.

4.4. Right of Making Available to the Public of Fixed Performances

Communication to the public

Section 78, subsection 1, subparagraph 1

1. The performer shall have the exclusive right to
 - 1) make his performance available to the public (Article 19a),

4.5. Right of Broadcasting

No such provision

4.6. Right of Communication to the Public

Special case of "communication", Section 78, subsection 1, subparagraph 3

Communication to the public

Section 78, subsection 1, subparagraph 1

1. The performer shall have the exclusive right to
 - 3) make his performance perceivable to the public by screen, loudspeaker or similar technical devices in a place other than that in which the live rendering takes place.

4.7. Right of Public Performance

No such provision

4.8. Any Other Exclusive Right Concerning Fixed Performances

No such provision.

5. Rights to remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Remuneration for rental and lending

Section 27 (applied by a reference in section 77 (2))

1. (Where the author has granted rental rights (Article 17) in respect of a video or audio recording to the producer of the audio recording or of a film, the lessor shall nevertheless pay the author an equitable remuneration for the rental. The claim for remuneration may not be waived. It may be assigned in advance only to a collecting society.
2. The author shall be paid an equitable remuneration for the lending of those originals or copies of a work whose dissemination is permissible according to Article 17 (2) if the originals or copies are lent through a publicly accessible institution (library, collection of video or audio recordings or other originals or copies thereof). Lending within the meaning of the first sentence is the time-limited transfer for use which neither directly nor indirectly serves profit-making purposes; Article 17 (3), second sentence, shall apply mutatis mutandis.
3. The claims for remuneration under paragraphs (1) and (2) may be asserted only through a collecting society.

5.2. Right to Remuneration for Communication to the Public or Broadcasting of a Film

Communication to the public and Broadcasting

Section 78, subsection 2, subparagraph 1

2. An equitable remuneration shall be paid to the performer if
 - 1) the performance is legally broadcast pursuant to paragraph (1), item 2,²⁹

5.3. Any Other Right to Remuneration

Public performance and Communication to the public

Section 78, subsection 2, subparagraph 2 and 3

2. An equitable remuneration shall be paid to the performer if
 - 2) the performance is communicated to the public means of video or audio recording mediums

²⁹ Section 78, subsection 1, item 2: The performer shall have the exclusive right to broadcast his performance, unless the performance has been legally fixed on video or audio recording mediums which have been released or legally made available to the public.

- 3) the broadcast or the communication of the performance to the public which is based on the right of making works available the public is made perceivable to the public.³⁰

5.3.2. Remuneration for the granting of exploitation rights

Equitable remuneration

Section 32 (applied by a reference in Section 79)

1. The author shall have a right to the contractually agreed remuneration for the granting of exploitation rights and permission for exploitation of the work. If the amount of the remuneration has not been determined, equitable remuneration shall be deemed to have been agreed. If the agreed remuneration is not equitable, the author may require the other party to consent to a modification of the agreement so that the author is granted equitable remuneration.
2. Remuneration shall be equitable if determined in accordance with a joint remuneration agreement (Article 36). Any other remuneration shall be equitable if at the time the agreement is concluded it corresponds to what in business relations is customary and fair, given the nature and extent of the possibility of exploitation granted, in particular the duration and time of exploitation, and considering all circumstances.
3. An agreement which deviates from paragraphs (1) and (2) to the detriment of the author may not be invoked by the other party to the agreement. The provisions stipulated in the first sentence shall apply even if they are circumvented by other arrangements. The author may, however, grant a non-exclusive exploitation right to anyone free of charge.
4. The author shall have no right pursuant to paragraph (1), third sentence, to the extent that the remuneration for exploitation of his works has been determined in a collective bargaining agreement.

5.3.3 Remuneration for cable retransmission

Cable retransmission

Section 20b (applied by a reference in section 78 (4))

1. The right to retransmit a transmitted work in the context of a simultaneous, unaltered and unabridged retransmission of a program by means of cable systems or microwave systems (cable retransmission) may be asserted only by a

³⁰ In the original version: "(2) Dem ausübenden Künstler ist eine angemessene Vergütung zu zahlen, wenn 2. die Darbietung mittels Bild- oder Tonträger öffentlich wahrnehmbar gemacht oder 3. die Sendung oder die auf öffentlicher Zugänglichmachung beruhende Wiedergabe der Darbietung öffentlich wahrnehmbar gemacht wird.

collecting society. This shall not apply to rights asserted by a broadcasting organisation in respect of its broadcasts.

2. Where the author has granted the right of cable retransmission to a broadcasting organisation or to the producer of an audio recording or film, the cable operator shall nevertheless pay the author an equitable remuneration for the cable retransmission. The claim for remuneration may not be waived. It may be assigned in advance only to a collecting society and may be asserted only by a collecting society. This provision shall not conflict with the collective agreements, works agreements and joint remuneration agreement of broadcasting organisations insofar as the author is thereby granted equitable remuneration for each cable retransmission.

Obligation to pay remuneration

Section 54

1. Where the nature of a work makes it probable that it will be reproduced, pursuant to Article 53 (1) to (3), the author of the work shall be entitled to payment of equitable remuneration from the manufacturer of appliances and of storage mediums, where the type of appliance or storage medium is used solely or together with other appliances, storage mediums or accessories, for the making of such reproductions.
2. The claim according to paragraph (1) shall not apply where in the light of the circumstances it can be expected that the appliances or storage mediums will not be used for reproductions in the territory to which this Act applies.

Collecting societies

Section 54h

2. Each rightholder shall be entitled to an equitable share of the remuneration paid pursuant to Articles 54 to 54c. So far as works are protected by technological measures pursuant to Article 95a, they shall not be taken into account when income is distributed.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

No such provision

6.2. Any Other Presumption

Performers

Section 92, subsections 1, 2

1. Where a performer concludes with the producer of the film a contract in respect of his participation in the production of a cinematographic work, this shall in cases of doubt be deemed to have included the granting of the right to use the performance in a particular manner of exploitation to which the performer is entitled in accordance with Article 77(1) and (2), first sentence, and Article 78(1) items 1 and 2.
2. If the performer has assigned in advance a right referred to in paragraph (1) or granted to a third party an exploitation right therein, he shall nevertheless retain the entitlement to assign or grant this right in respect of exploitation of the cinematographic work to the film producer.

7. Transfer of Rights

Exploitation rights

Section 79, subsections 1, 2

1. The performer may transfer his rights and claims afforded by Articles 77 and 78. Article 78 (3) and (4) shall remain unaffected.
2. The performer may grant to another a right to use the performance in a particular manner or in any manner of exploitation to which he is entitled. Articles 31, 32 to 32b, 33 to 42 and 43 shall apply mutatis mutandis

Transfer of exploitation rights

Section 34 (applied by a reference in section 79 (2))

1. An exploitation right may only be transferred with the author's consent. The author may not refuse his consent contrary to the principles of good faith.
2. Where the transfer of the exploitation right in respect of a collection (Article 4) includes the transfer of the exploitation right of the individual works in the collection, the consent of the author of the collection shall suffice.
3. An exploitation right may be transferred without the author's consent if the transfer is comprised in the sale of the whole of an enterprise or the sale of parts of an enterprise. The author may revoke the exploitation right if exercise of the exploitation right by the transferee may not be reasonably demanded of the author. The second sentence shall also apply when the shareholder relations with respect to the enterprise of the holder of the exploitation rights are substantially changed.

4. The transferee shall be jointly and severally liable for the discharge of the transferor's obligations under his agreement with the author, if the author has not expressly consented to the transfer of the exploitation right in the individual case.
5. The author may not waive the right of revocation and the liability of the transferee in advance. Otherwise, the holder of the exploitation right and the author may agree on different terms.

8. Additional Information

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Author's further participation³¹

Section 32a (Applied by a reference in a section 79 (2))

1. Where the author has granted an exploitation right to another party on conditions which, taking into account the author's entire relationship with the other party, result in the agreed remuneration being conspicuously disproportionate to the proceeds and benefits derived from the exploitation of the work, the other party shall be obliged, at the author's request, to consent to a modification of the agreement which grants the author further equitable participation appropriate to the circumstances. It shall be irrelevant whether the parties to the agreement had foreseen or could have foreseen the amount of the proceeds or benefits obtained.
2. If the other party has transferred the exploitation right or granted further exploitation rights and if the conspicuous disproportion results from proceeds or benefits enjoyed by a third party, the latter shall be directly liable to the author in accordance with paragraph (1), taking into account the contractual relationships within the licensing chain. The other party shall then not be liable.
3. The rights under paragraphs (1) and (2) may not be waived in advance. An expected benefit shall not be subject to compulsory execution; any disposition

31 "With regard to audiovisual performers' rights it is important to note that, according to the preparatory documents of the new law, only the main performers in the work may have a claim under this provision of the law. According to those documents a distinction should be made in this respect between principal performers, supporting actors and statisticians. Interestingly enough, it is made clear that this is not to be interpreted along the same lines as the distinction made in the French author's rights law where protection is granted only for main performers and so called ancillary performers are excluded from the protection."

Source: Salokannel, Marjut (2003). Study on Audiovisual Performers' Contracts and Remuneration Practices in France and Germany. Ad Hoc Informal Meeting on the Protection of Audiovisual Performances at WIPO. Page 32 The study is available at http://www.wipo.int/edocs/mdocs/copyright/en/avp_im_03/avp_im_03_3b.pdf. Visited on 29.4.2016.

regarding the expected benefit shall be ineffective. The author may, however, grant an unremunerated non-exclusive exploitation right for every person.

4. The author shall not have a right pursuant to paragraph (1) if the remuneration has been determined in accordance with a joint remuneration agreement (Article 36) or in a collective agreement and explicitly provides for a further equitable participation in cases under paragraph (1).

Greece

law No. 2121/1993 on Copyright, Related Rights and Cultural Matters³²

Elements

1. Framework Provisions

1.1. Definitions

Section 46, subsection 1: Definition of performer

1.2. National Treatment

2. Moral Rights

2.1 Paternity right

Section 50, subsections 1, 2

2.2 Integrity right

Section 50, subsections 1, 2

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 46, subsection 2, subparagraph a

3.2. Broadcasting and Communication to the Public

Section 46, subsection 2, subparagraphs f, g

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 46, subsection 2, subparagraph b

4.2. Right of Distribution

Section 46, subsection 2, subparagraph c

4.3. Right of Rental (and lending)

Section 46, subsection 2, subparagraph d

4.4. Right of Making Available to the Public of Fixed Performances

Section 46, subsection 2, subparagraph h

4.5. Right of Broadcasting

- Partially, see Section 46, subsection 2, subparagraph e.

4.6. Right of Communication to the Public

- Partially, see Section 46, subsection 2, subparagraph e.

³² The act as amended up to Law No. 4281/2014 is available in English at <http://www.wipo.int/wipolex/en/details.jsp?id=15581>.

4.7. Right of Public Performance

- No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 46, subsection 3 (applies to employment contracts)

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

Section 49, subsection 5

5.3. Any Other Right to Remuneration

License by performers (remuneration for each act in employment contracts)

Section 46, subsection 3

Reproduction for private use

Section 18, subsection 3

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

- No such provision.

6.2. Any Other Presumption

License by performers (presumption on acts authorized when performer enters into an employment contract)

Section 46, subsection 3

7. Transfer of Rights

License by performers

Section 46, subsections 2, 5

Transfer

Section 12, subsection 2 (applied by a reference in Section 50, subsection 3)

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Provisions of the Law No. 2121/1993 on Copyright, Related Rights and Cultural Matters, Greece

1. Framework Provisions

1.1. Definitions

1.1.1 Definition of performer

License by performers

Section 46, subsection 1

1. The term “performers” shall designate persons who in any way act or perform works, such as actors, musicians, singers, chorus singers, dancers, puppeteers, shadow theater artists, variety performers or circus artists.

2. Moral Rights

2.1 Paternity Right

Moral Right

Section 50, subsections 1, 2

1. During their lifetime, performers shall have the right to full acknowledgment and credit of their status as such in relation to their performances and to the right to prohibit any form of alteration of their performances.
2. After the death of a performer that person’s moral right shall pass to his heirs.

2.1 Integrity Right

Moral Right

Section 50, subsections 1, 2

1. During their lifetime, performers shall have the right to full acknowledgment and credit of their status as such in relation to their performances and to the right to prohibit any form of alteration of their performances.
2. After the death of a performer that person’s moral right shall pass to his heirs.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

License by performers

Section 46, subsection 2, subparagraph a

2. The performers or performing artists have the right to authorise or prohibit:
 - a. the fixation of their performance

3.2. Broadcasting and Communication to the Public

License by performers

Section 46, subsections 2, subparagraphs f, g

2. The performers or performing artists have the right to authorise or prohibit:
 - f. the radio and television broadcasting by any means, such as wireless waves, satellites, or cable, of their live performance, except where the said broadcasting is rebroadcasting of a legitimate broadcasting.
 - g. the communication to the public of their live performances made by any means other than radio or television transmission

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

License by performers

Section 46, subsection 2, subparagraph b

2. The performers or performing artists have the right to authorise or prohibit:
 - b. the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, concerning the fixation of their performance

4.2. Right of Distribution

License by performers

Section 46, subsection 2, subparagraph c

2. The performers or performing artists have the right to authorise or prohibit:
 - c. the distribution to the public of the fixation of their performance, by sale or other means. The distribution right shall not be exhausted within the Community in respect of the fixation of the performance except where the first sale in the Community is made by the rightholder or with his consent

4.3. Right of Rental (and lending)

License by performers

Section 46, subsection 2, subparagraph d

2. The performers or performing artists have the right to authorise or prohibit:
 - d. the rental and public lending of the fixation of their performance. Such rights are not exhausted by any sale or other act of distribution of the said recordings.

4.4. Right of Making Available to the Public of Fixed Performances

License by performers

Section 46, subsection 2, subparagraph h

2. The performers or performing artists have the right to authorise or prohibit:
 - h. the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them. This right is not exhausted by any act of making available to the public, in the sense of this provision" (articles 2, 3 par. 2 and 3, 4 of Directive 2001/29).

4.5. Right of Broadcasting

Partially,

License by performers

Section 46, subsection 2, subparagraph e

2. The performers or performing artists have the right to authorise or prohibit:
 - e. the radio and television broadcasting of the illegal fixation by any means, such as wireless waves, satellites, or cable as well as the communication to the public of a recording with an illegal fixation of their live performances

4.6. Right of Communication to the Public

Partially,

License by performers

Section 46, subsection 2, subparagraph e

2. The performers or performing artists have the right to authorise or prohibit:
 - e. the radio and television broadcasting of the illegal fixation by any means, such as wireless waves, satellites, or cable as well as the communication to the public of a recording with an illegal fixation of their live performances

4.7. Right of Public Performance

No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

License by performers

Section 46, subsection 3

3. Subject to contractual clauses to the contrary, explicitly specifying which acts are authorized, the acts listed in paragraph (2), above, shall be presumed to have been authorized when a performer has entered into an employment contact, having as its object the operation of those particular acts, with a party who is doing such acts. The performer shall at all times retain the right to remuneration for each of the acts listed in paragraph (2), above, regardless of the form of exploitation of his performance. In particular, the performer shall retain an unwaivable right to equitable remuneration for rental, if he has authorized a producer of sound or visual, or audiovisual recordings, to rent out recordings carrying fixations of his performance.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

Right to equitable remuneration

Section 49, subsection 5

5. When visual or audiovisual recordings are used for radio or television broadcast by any means, such as wireless waves, satellite or cable or communication to the public, the user shall pay equitable remuneration to the performers, whose performances are carried on the recordings. The provisions of paragraph 1 item b, c, d and e, as well as paragraphs 2 and 4 of the present article shall be applicable *mutatis mutandis*.

5.3.1 Any Other Right to Remuneration

License by performers

Section 46, subsection 3

3. Subject to contractual clauses to the contrary, explicitly specifying which acts are authorized, the acts listed in paragraph (2), above, shall be presumed to have been authorized when a performer has entered into an employment contact, having as its object the operation of those particular acts, with a party who is doing such acts. The performer shall at all times retain the right to remuneration for each of the acts listed in paragraph (2), above, regardless of the form of exploitation of his performance. In particular, the performer shall retain an unwaivable right to equitable remuneration for rental, if he has authorized a producer of sound or visual, or audiovisual recordings, to rent out recordings carrying fixations of his performance.

Reproduction for private use**Section 18, subsection 3**

3. If, for the free reproduction of the work, use is made of technical media, such as (as amended with article 46 Law 3905/2010) recording equipment for sound or image or sound and image, equipment or parts incorporated or not in the main computer unit operating in conjunction there with, used solely for digital reproduction or digital transcription to or from analog media (with the exception of printers), magnetic tapes or other devices for the reproduction of sound or image or sound and image, including digital reproduction devices - such as CD-RW, CD-R, portable optical magnetic discs with a capacity of more than 100 million digits (over 100 Mbytes), storage media/disquettes of less than 100 million digits (less than 100 Mbytes) - photocopy machines, photocopy paper, equitable remuneration is due to the creator of the work and the beneficiaries of related rights under this provision, with the exception of assets to be exported. The remuneration is set at 6% of the value of the devices for the reproduction of sound or image or sound and image, including devices or parts not incorporated or not susceptible to incorporation in the main computer unit (with the exception of scanners), magnetic tapes or other devices suitable for the reproduction of sound or image or sound and image as well as digital reproduction devices - with the exception of storage media/disquettes of less than 100 million digits (less than 100 Mbytes) - and at 4% of the value of the photocopy machines, scanners, photocopy paper and storage media (disquettes) with a capacity of less than 100 million digits (less than 100 Mbytes). In any event, the value is calculated on import or distribution from the factory. The remuneration is paid by the importers or producers of such items and is noted in the invoice; it is collected by collecting societies operating with the approval of the Ministry of Culture and covering in whole or in part the concerned category of beneficiaries. The remuneration collected for the import or production of photocopy machines, photocopy paper, storage media (disquettes) of less than

100 million digits and scanners (4%) is distributed in half between the intellectual creators and editors. The remuneration collected for the import or production of recording devices and sound or image or sound and image devices, devices and parts not incorporated in the main computer unit (6%), as well as digital reproduction devices, with the exception of storage media (disquettes) of less than 100 million digits, is distributed as follows: 55% to the intellectual creators, 25% to the performers or performing artists and 20% to the producers of recorded magnetic tapes or other recorded devices for sound or image or sound and image. The concept of “photocopying machines or devices” also includes any multi-machine capable of reproduction by photocopy.

6. Presumptions

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

No such provision.

6.2. Any Other Presumption

License by performers

Section 46, subsections 3

3. Subject to contractual clauses to the contrary, explicitly specifying which acts are authorized, the acts listed in paragraph (2), above, shall be presumed to have been authorized when a performer has entered into an employment contact, having as its object the operation of those particular acts, with a party who is doing such acts. The performer shall at all times retain the right to remuneration for each of the acts listed in paragraph (2), above, regardless of the form of exploitation of his performance. In particular, the performer shall retain an unwaivable right to equitable remuneration for rental, if he has authorized a producer of sound or visual, or audiovisual recordings, to rent out recordings carrying fixations of his performance.

7. Transfer of rights

License by performers

Section 46, subsections 2, 5

2. The performers or performing artists have the right to authorise or prohibit:
 - a. the fixation of their performance

- b. the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, concerning the fixation of their performance
 - c. the distribution to the public of the fixation of their performance, by sale or other means. The distribution right shall not be exhausted within the Community in respect of the fixation of the performance except where the first sale in the Community is made by the rightholder or with his consent
 - d. the rental and public lending of the fixation of their performance. Such rights are not exhausted by any sale or other act of distribution of the said recordings.
 - e. the radio and television broadcasting of the illegal fixation by any means, such as wireless waves, satellites, or cable as well as the communication to the public of a recording with an illegal fixation of their live performances
 - f. the radio and television broadcasting by any means, such as wireless waves, satellites, or cable, of their live performance, except where the said broadcasting is rebroadcasting of a legitimate broadcasting.
 - g. the communication to the public of their live performances made by any means other than radio or television transmission
 - h. the making available to the public of fixations of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them. This right is not exhausted by any act of making available to the public, in the sense of this provision" (articles 2, 3 par. 2 and 3, 4 of Directive 2001/29).
5. It is prohibited to transfer during the lifetime of the performer and to waive the rights referred to in paragraph (2)³³, above. The administration and protection of the aforementioned rights may be entrusted to a collecting society pursuant to Articles 54 to 58 of this Law.

Transfer

Section 12, subsection 2 (applied by a reference in Section 50, subsection 3)

- 2. The moral rights shall not be transferable between living persons. After the death of an author, the moral rights shall pass to his heirs, who shall exercise the rights in compliance with the author's wishes, provided that such wishes have been explicitly expressed.

8. Additional information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

³³ Performers' exclusive rights

Hungary

LXXVI of 1999 on Copyright³⁴

Elements

1. Framework Provisions

- 1.1. Definitions
- 1.2. National Treatment

2. Moral Rights

- 2.1 Paternity Right
Section 75, subsection 1
- 2.2 Integrity Right
Section 75, subsection 2

3. Live Performances – Exclusive Rights

- 3.1. Right of Fixation
Section 73, subsection 1, subparagraph a
- 3.2. Broadcasting and Communication to the Public
Section 73, subsection 1, subparagraph b

4. Fixed Performances – Exclusive Rights

- 4.1. Right of Reproduction
Section 73, subsection 1, subparagraph c
- 4.2. Right of Distribution
Section 73, subsection 1, subparagraph d
- 4.3. Right of Rental (and lending)
Section 73, subsection 1, subparagraph d
Section 23, subsections 2, 3
- 4.4. Right of Making Available to the Public of Fixed Performances
Section 73, subsection 1, subparagraph e
- 4.5. Right of Broadcasting
- No such provision.
- 4.6. Right of Communication to the Public
- No such provision.

³⁴ With subsequent amendments, latest being Act CIX of 2006. Translation January, 2007.

4.7. Right of Public Performance

- No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 23, subsection 6 (applied by a reference in Section 73, subsection 3)

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- No such provision

5.3. Any Other Right to Remuneration

Remuneration for private copying

Section 20, subsection 1

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

- No such provision

6.2. Any Other Presumption

Section 73, subsection 3: Presumption on the transfer of economic rights to the producer of the film

7. Transfer of Rights

General provisions for license agreements

Section 42 (applied by a reference in Section 55)

Section 43 (applied by a reference in Section 55)

Section 44 (applied by a reference in Section 55)

Section 45, subsection 1 (applied by a reference in Section 55)

Section 46 (applied by a reference in Section 55)

Section 47 (applied by a reference in Section 55)

Provisions concerning the termination of an agreement

Section 51 (applied by a reference in Section 55)

Section 52 (applied by a reference in Section 55)

Section 53 (applied by a reference in Section 55)

Section 54 (applied by a reference in Section 55)

Ensembles

Section 73, subsection 2

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Section 48 (applied by a reference in Section 55)

Section 49 (applied by a reference in Section 55)

Section 50 (applied by a reference in Section 55)

Provisions of Act No. LXXVI of 1999 on Copyright, Hungary

1. Framework Provisions

1.1. Definitions

1.2. National Treatment

2. Moral Rights

2.1. Paternity Right

Section 75, subsection 1

1. In the case of the uses referred to in Article 73, Paragraph (1), the performer shall have the moral right to have his name indicated, depending on the nature of the use and in a manner consistent with it. In the case of ensembles of performers, this right shall apply to the indication of the names of the ensemble, the leader of the ensemble, and the chief performers.

2.2. Integrity Right

Section 75, subsection 2

2. The distortion, mutilation or any other alteration of a performance which prejudices the honour or reputation of the performer shall be taken to infringe his moral right.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 73, subsection 1, subparagraph a

1. Unless otherwise provided by statute, the performer's consent shall be sought for:
 - a. the fixation of his unfixed performance;

3.2. Broadcasting and Communication to the Public

Section 73, subsection 1, subparagraph b

1. Unless otherwise provided by statute, the performer's consent shall be sought for:

- b. the broadcasting or the communication in another manner to the public of his unfixed performance, unless the performance broadcast or communicated in another manner to the public is a broadcast performance itself;

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 73, subsection 1, subparagraph c

1. Unless otherwise provided by statute, the performer's consent shall be sought for:
 - c. the reproduction of his fixed performance;

4.2. Right of Distribution

Section 73, subsection 1, subparagraph d

1. Unless otherwise provided by statute, the performer's consent shall be sought for:
 - d. the distribution of his fixed performance;

4.3. Right of Rental (and lending)

Potentially part of Section 73, subsection 1, subparagraph d (Section 23 cited below for reference purposes):

Section 73, subsection 1, subparagraph d

1. Unless otherwise provided by statute, the performer's consent shall be sought for:
 - d. the distribution of his fixed performance;

Section 23, subsections 2, 3

2. The distribution shall in particular imply the transfer of the title of ownership of the copy of the work and the rental of the copy of the work as well as the importation into the country of the copy of the work with the purpose of putting it into circulation. --
3. In the case of cinematographic creations, works included in sound recordings and software, the lending to the public of individual copies of the work shall likewise be covered by the right of distribution.

4.4. Right of Making Available to the Public of Fixed Performances

Section 73, subsection 1, subparagraph e

1. Unless otherwise provided by statute, the performer's consent shall be sought for:

- e. making his performance available to the public by cable or any other device or in any other manner so that the members of the public can choose the place and time of the availability individually.

4.5. Right of Broadcasting

No such provision

4.6. Right of Communication to the Public

No such provision

4.7. Right of Public Performance

No such provision

4.8. Any Other Exclusive Right Concerning Fixed Performances

No such provision

5. Rights to Remuneration

General Provision

Section 74

1. Unless otherwise provided by this Act, remuneration shall be due to the performer for the uses mentioned in Article 73, Paragraph (1).

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 23, subsection 6 (applied by a reference in Section 73, subsection 3)

6. If the right of rental relating to a cinematographic creation or a work included in a sound recording has been transferred, or otherwise licensed, by the author to the producer of the film or sound recording, the author shall retain a claim to the producer of the film or sound recording for a fair and equitable remuneration regarding the distribution of the work through rental. This right may not be waived by the author, however, he may enforce his claim to a remuneration only via an organization performing the collective administration of rights (Articles 85 to 93).

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision

5.3. Any Other Right to Remuneration

Section 20, subsection 1

1. A fair and equitable remuneration shall be due, on the private purpose copying of their works, performances, films and sound recordings, to the authors of works, the performers of performances, and the producers of films and sound recordings that are broadcast in the programmes of radio and television organizations, included in the programmes of the entities communicating their own programmes to the public by cable, and released for distribution on audiovisual or audio carriers.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

No such provision.³⁵

6.2. Any Other Presumption

Section 73, subsection 3

3. In case the performer has consented to his performance being fixed in a cinematographic creation, by this consent - unless otherwise stipulated - he transfers upon the producer of the film the economic rights referred to in Paragraph (1) (Article 63, Paragraph (3)). This provision shall not prejudice the performers' claim to remuneration pursuant to Articles 20 (=remuneration for private copying) and 28 (=retransmissions).

7. Transfer of Rights

General Provisions for License Agreements

³⁵ (See § 73, subs. 7(3))

Section 42 (applied by a reference in Section 55)

1. On the basis of a license agreement the author authorizes the use of his work and the user is obliged to pay a remuneration therefor.
2. The parties may freely agree on the contents of the license agreement; by mutual consent they may waive the observance of the provisions relating to the license agreement if this is not prohibited by this Act or other provision of law.
3. If the contents of the license agreement cannot be interpreted unambiguously, the interpretation most favourable for the author shall be accepted.

Section 43 (applied by a reference in Section 55)

1. The license agreement shall provide exclusive right to use only by an express stipulation to that end. In case an exclusive authorization obtains, only the acquirer of right may exploit the work, the author may not grant further authorizations for the use of the work, and even he himself remains entitled to use his work only if this is stipulated in the contract.
2. The authorization provided for non-exclusive use prior to the conclusion of the agreement in which exclusive use is authorized shall remain valid unless otherwise provided by the agreement concluded between the author and the user acquiring non-exclusive right of use.
3. The authorization of use may be limited to a specific domain, period of time, manner of use and extent of use.
4. Unless otherwise provided by statute or agreement, the authorization of use shall cover the territory of the Republic of Hungary and its term shall be in compliance with the period customary in agreements concluded on the use of works similar to the subject-matter of the agreement.¹
5. If the agreement does not provide for the manners of use which the authorization is intended to apply to or does not provide for the authorized extent of use, the authorization shall be limited to the manner and extent of use indispensably necessary for the implementation of the objectives of the agreement.

Section 44 (applied by a reference in Section 55)

1. The stipulation of the license agreement whereby the author authorizes the use of an indefinite number of works he is to create in the future shall be taken to be null and void.
2. No authorization of a manner of use still unknown at the conclusion of the agreement may be granted. However, the method of the use evolving following the conclusion of the agreement is not to be considered a manner of use still unknown at the conclusion of the agreement if what is merely involved is that a manner of use known earlier will be possible to be applied more effi-

ciently, in more favourable conditions or in a better quality as a result of the improvement of methods.

Section 45, subsection 1 (applied by a reference in Section 55)

1. Unless otherwise provided by this Act, the license agreement shall be drawn up in a written form.

Section 46 (applied by a reference in Section 55)

1. The user may confer the authorization or may grant sub-licence to a third person for the use of the work only subject to the author's express consent thereto.
2. The authorization of use shall, without the author's consent, be transferred to the successor in title in case the economic organization authorized for the use is wound up or the affected organizational unit of its is withdrawn from it.
3. In case the user confers its rights or grants sub-licence without the author's consent or the authorization of use is transferred without the author's consent, the user and the acquirer of rights shall be jointly and severally responsible for the fulfilment of the license agreement.

Section 47 (applied by a reference in Section 55)

1. The authorization of use shall cover the alteration of the work only on express stipulation to that end.
2. The authorization of reproduction shall permit the user to fix the work in video or sound recording or to copy it by computer or onto an electronic data carrier only on express stipulation to that end.
3. The authorization of the distribution of the work shall permit the user to import copies of the work for purposes of putting them into circulation only on express stipulation to that end.
4. The authorization of the reproduction of the work shall, in case of doubt, cover the distribution of the reproduced copies of the work. This shall not imply, however, the importation into the country of copies of the work for purposes for putting them into circulation.

Provisions concerning the termination of an agreement

Section 51 (applied by a reference in Section 55)

1. The author may unilaterally terminate the agreement containing the authorization of exclusive use if
 - a. the user fails to commence the use of the work within the period determined in the agreement or - in the absence of a stipulated period - within the period reasonably to be expected in the given situation; or

- b. the user exercises his rights acquired by the agreement in a manner obviously inappropriate for the implementation of the goals of the agreement or in a manner other than consistent with the intended purpose.
- 2. If the agreement for use is concluded with an indefinite term or for a period longer than five years, the author may exercise his right of termination referred to in Paragraph (1) only after two years have passed from the date of the conclusion of the agreement.
- 3. The author may exercise his right of termination only after he has set a deadline to the user for the fulfilment of the terms and conditions of the agreement and that deadline has expired with no result achieved.
- 4. The author may not in advance waive his right of termination referred to in Paragraph (1); such waiver may be excluded by agreement only for a five years' period following the conclusion of the agreement or the delivery of the work if this occurs at a later date than is that of the conclusion of the agreement.
- 5. Instead of termination of the agreement, the author may terminate the exclusivity of the authorization with a simultaneous proportional reduction of the fee to be paid to him for the use.

Section 52 (applied by a reference in Section 55)

- 1. If the agreement for use relating to works to be created in the future is concluded so that the future works are referred to only by their genre or character, either party may terminate the agreement with a six months' notice after the lapse of five years and thereafter repeatedly after the lapse of five years' terms.
- 2. The author may not in advance waive his right of termination referred to in Paragraph (1).

Section 53 (applied by a reference in Section 55)

- 1. The author may terminate the license agreement if, with reference to any reasonable grounds, he withdraws his authorization to publish his work to the public or forbids the further use of his work having been published.
- 2. The exercise of the right of termination is subject to the author providing a security for making up for the damage having arisen till the time of the announcement of the denunciation.
- 3. If following the termination of the license agreement as provided by Paragraph (1) the author wants again to consent to publishing his work to the public or to its continued use, the previous user shall have the right of first refusal in respect of the licence.
- 4. The rules governing the right of first refusal regarding sale of goods shall apply to the right of first refusal in respect of the licence.

Section 54 (applied by a reference in Section 55)

The license agreement shall cease to have effect with the lapse of the time determined in the agreement, with the emergence of the circumstances referred to in the agreement, as well as after the expiration of the term of protection.

Ensembles**Section 73, subsection 2**

2. In the case of an ensemble of performers, the performers may exercise their rights referred to in Paragraph (1) via their representative.

8. Additional Information**8.1. Applicability****8.2. Limitations****8.3. Other Possible Specificities****Section 48 (applied by a reference in Section 55)**

According to the general provisions of civil law the court may alter the license agreement even if such an agreement infringes the author's substantive lawful interest in having an equitable share in the income on use for the reason that because of the considerable increase in the demand for the use of the work following the conclusion of the agreement the difference in value between the services respectively provided by the parties becomes strikingly great.

Section 49 (applied by a reference in Section 55)

1. The user is obliged to make a statement on the acceptance of a work delivered to him under an agreement relating to a work to be created in the future within two months from the date of the delivery of the work to him. If the user returns the work to the author for corrections to be made in it, the term shall be counted from the date of the delivery of the corrected work. If no statement is made by the user within the term available to him for that purpose, the work shall be considered as accepted.
2. In case the agreement was concluded on a work to be created in the future, the user shall be entitled to repeatedly return the finished work, with reference to justified grounds and by setting appropriate deadlines, to the author for purposes of correction.
3. In case the author refuses to make corrections without reasonable grounds, or fails to make the corrections by the deadline set, the user may rescind from the agreement without the payment of remuneration.
4. In case the work proves unsuitable for use even after the correction, only a reduced remuneration shall be paid to the author.

Section 50 (applied by a reference in Section 55)

If the author authorizes the use of his work, he is obliged to perform on it the alterations not affecting its essence but indispensably or obviously necessary for the use. Should he refuse or be unable to meet this obligation, the user may perform the alterations without his consent.

Ireland

Copyright and Related Rights Act, 2000³⁶

Copyright and Related Rights (Amendment) Act 2004³⁷

Copyright and Related Rights (Amendment) Act 2007³⁸

Elements

1. Framework Provisions

1.1. Definitions

Section 202, subsection 1: Definition of performer

1.2. National Treatment

2. Moral Rights

2.1 Paternity right

Section 309

2.2 Integrity right

Section 311

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 203, subsection 1, subparagraph a

3.2. Broadcasting and Communication to the Public

Section 203, subsection 1, subparagraphs b, c

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 204, subsections 1, 6

4.2. Right of Distribution

Section 206

4.3. Right of Rental (and lending)

Section 207

4.4. Right of Making Available to the Public of Fixed Performances

Section 205, subsections 1, 5(a)

36 The act is available at <http://www.irishstatutebook.ie/eli/2000/act/28/enacted/en/print.html>.

37 The act is available at <http://www.irishstatutebook.ie/2004/en/act/pub/0018/index.html>.

38 The act is available at <http://www.irishstatutebook.ie/eli/2007/act/39/enacted/en/html>.

4.5. Right of Broadcasting

Section 205, subsections, 1, 5(c)

4.6. Right of Communication to the Public

No such provision.

4.7. Right of Public Performance

Section 205, subsection 5, subparagraph b

4.8. Any Other Exclusive Right Concerning Fixed Performances

Section 205, subsection 5, subparagraph d (Right to include copy of the recording in a cable programme service)

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 298

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

– No such provision.

5.3. Any Other Right to Remuneration

Public lending remuneration scheme

Section 42a, subsections 1, 5

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 297

6.2. Any Other Presumption

- No other presumptions.

7. Transfer of Rights

Transmission of performers' property rights

Section 293

Waiver of rights

Section 316

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Provisions of Copyright and Related Rights Act, Ireland

1. Framework Provisions

1.1. Definitions

1.1.1 Definition of performer

Interpretation

Section 202, subsection 1

1. In Parts III and IV, “performance” means a performance of any actors, singers, musicians, dancers or other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary, dramatic, musical or artistic works or expressions of works of folklore, which is a live performance given by one or more individuals, and shall include a performance of a variety act or any similar presentation

2. Moral Rights

2.1 Paternity Right

Paternity right

Section 309

1. Subject to the exceptions specified in section 310, a performer shall, where practicable, have the right to be identified as the performer of his or her performance.
2. Where a performer uses a pseudonym, initials or other form of identification that form shall be used to identify his or her performance.

2.2 Integrity Right

Integrity right

Section 311

1. Subject to the exceptions specified in section 312, a performer shall have the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his or her performance or a recording thereof, which would prejudice his or her reputation

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Performers' rights: general

Section 203, subsection 1, subparagraph a

1. A performer has the exclusive right to authorise or prohibit—
 - a. the making of a recording³⁹ of the whole or any substantial part of a qualifying performance directly from the live performance,

3.2. Broadcasting and Communication to the Public

Section 203, subsection 1, subparagraphs b, c

1. A performer has the exclusive right to authorise or prohibit—
 - b. the broadcasting live, or including live in a cable programme service, of the whole or any substantial part of a qualifying performance, or
 - c. the making of a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of, or cable programme including, the live performance.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Reproduction right of performer

Section 204, subsections 1, 6

1. A performer has the exclusive right to authorise or prohibit the making of a copy of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.
6. For the purposes of Parts III and IV, references to the making of a copy of a recording or to copying shall include the making of a temporary or permanent copy of a recording and the storing of a recording in any medium.

³⁹ Section 202, subsection 4

(4) In Parts III and IV, "recording", in relation to a performance, means any fixation—

- (a) made directly or indirectly from the live performance,
- (b) made from a broadcast of, or cable programme including, the performance, or
- (c) made directly or indirectly from another recording of the performance.

4.2. Right of Distribution

Distribution right of performers

Section 206

1. References in Parts III and IV to the issue of copies of a recording to the public shall be construed as including—
 - a. the act of putting into circulation in a Member State of the EEA copies of a recording not previously put into circulation in a Member State of the EEA by or with the consent of the performer, or
 - b. the act of putting into circulation outside the Member States of the EEA copies of a recording not previously put into circulation in a Member State of the EEA or elsewhere.
2. Without prejudice to the rental right or the lending right, references in this Part to the issue of copies of a recording to the public shall not include—
 - a. any subsequent circulation of copies of a recording previously put into circulation, or
 - b. any subsequent importation of such copies of a recording into the State of any other Member State of the EEA, except in so far as subsection (1) (a) applies to putting into circulation in the Member States of the EEA copies of a recording previously put into circulation outside the Member States of the EEA.
3. A reference in this section to circulation shall include sale, rental or loan
4. A performer has the exclusive right to authorise or prohibit the issue of copies of a recording to the public of the whole or any substantial part of a qualifying performance.

4.3. Right of Rental (and lending)

Rental and lending right of performer

Section 207

1. References in Parts III and IV to “rental” or “lending” Rental and lending shall not be construed as including the making available to the public of copies of a recording for the purposes of—
 - a. playing or showing in public, broadcasting or inclusion in a cable programme service,
 - b. exhibiting in public, or
 - c. on the spot reference use.
2. A performer has the exclusive right to authorise or prohibit the rental or lending of copies of a recording of the whole or any substantial part of his or her qualifying performance.
- 3.

- a. There shall be right of the performer to authorise or prohibit the rental of copies of a recording which shall be known and in Parts III and IV referred to as the “rental right”.
 - b. There shall be a right of the performer to authorise or prohibit the lending of copies of a recording which shall be known and in Parts III and IV referred to as the “lending right”.
- (3a) The lending right in relation to a recording does not apply at any time in a period during which a scheme for the remuneration of authors is in effect, pursuant to section 42A, in relation to works of a class in which that recording is included, whether the performer, or (in the case of a recording of a performance by a number of performers) any of the performers, is a participant in that scheme or not.

4.4. Right of Making Available to the Public of Fixed Performances

Making available to public copies of recordings of qualifying performances

Section 205, subsections 1, 5(a)

- 1. Subject to subsection (2), a performer has the exclusive right to authorise or prohibit the making available to the public of copies of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.
- 5. A reference in Parts III and IV to the making available to the public of copies of a recording of a qualifying performance shall include—
 - a. making available to the public of copies of a recording, by wire or wireless means, in such a way that members of the public may access the recording from a place and at a time individually chosen by them, including the making available of copies of recordings through the Internet

4.5. Right of Broadcasting

Making available to public copies of recordings of qualifying performances

Section 205, subsections 1, 5(c)

- 1. Subject to subsection (2), a performer has the exclusive right to authorise or prohibit the making available to the public of copies of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.
- 5. A reference in Parts III and IV to the making available to the public of copies of a recording of a qualifying performance shall include—
 - c. broadcasting a copy of the recording

4.6. Right of Communication to the Public

No such provision.

4.7. Right of Public Performance

Making available to public copies of recordings of qualifying performances

Section 205, subsection 5, subparagraph b

1. Subject to subsection (2), a performer has the exclusive right to authorise or prohibit the making available to the public of copies of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.
5. A reference in Parts III and IV to the making available to the public of copies of a recording of a qualifying performance shall include—
 - b. showing or playing a copy of the recording in public

4.8. Any Other Exclusive Right Concerning Fixed Performances

Making available to public copies of recordings of qualifying performances

Section 205, subsection 5, subparagraph d

1. Subject to subsection (2), a performer has the exclusive right to authorise or prohibit the making available to the public of copies of a recording of the whole or any substantial part of a qualifying performance and it is immaterial whether the copy is made directly or indirectly.
5. A reference in Parts III and IV to the making available to the public of copies of a recording of a qualifying performance shall include—
 - b. including a copy of the recording in a cable programme service,

5. Rights to remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Right to equitable remuneration where rental right is transferred

Section 298

1. Without prejudice to the generality of section 297, where a performer has transferred his or her rental right he or she retains the right to equitable remuneration for the rental.
2. The right to equitable remuneration conferred by this section shall not be waived by the performer and the performer shall not assign the right to equitable remuneration except to a collecting society for the purpose of enabling the collecting society to exercise that right on his or her behalf.

3. The right to equitable remuneration is transmissible by way of testamentary disposition or by operation of law, as personal or moveable property and it may be further transmitted, including by assignment, by any person who legally acquires the right.
4. Equitable remuneration under this section is payable by the person to whom the rental right is transferred or any successor in title.
5. Subject to section 299, the amount payable by way of equitable remuneration is that which has been agreed by or on behalf of the persons by and to whom it is payable.
6. An agreement is void in so far as it purports to exclude or restrict the right to equitable remuneration conferred by this section.
7. References in this Part to the transfer of the rental right by one person to another include any arrangement having that effect whether made by them directly or through intermediaries.
8. In this section “collecting society” means a society or other organisation which has as one of its main objects the exercise of the right to collect equitable remuneration under this section on behalf of more than one performer.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision.

5.3. Any Other Right to Remuneration

Public lending remuneration scheme

Section 42A, subsections 1, 5

1. The Minister for the Environment, Heritage and Local Government may by regulation establish a scheme, to be known as the Public Lending Remuneration Scheme, to remunerate authors, out of moneys voted by the Oireachtas for the purpose, for the lending by public libraries of qualifying works
5. In this section—
‘author’ includes, in relation to a recording of a performance, the performer;

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Presumption of transfer of rental right in case of film production agreement

Section 297

1. Without prejudice to the right of a performer to receive equitable remuneration in respect of a rental right, where an agreement concerning film production is concluded between a performer and a film producer, the performer shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising by virtue of the inclusion of a recording of his or her performance in the film.
2. Where a presumption of transfer of the rental right arises by virtue of subsection (1), the absence of a signature by or on behalf of the performer shall not restrict the operation of section 293 or 294.
3. The reference in subsection (1) to an agreement concluded between a performer and a film producer includes any agreement whether made by them directly or through intermediaries.
4. The right to equitable remuneration on the transfer of the rental right applies where there is a presumed transfer under this section as in the case of an actual transfer.

6.2. Any Other Presumption

No other presumptions.

7. Transfer of Rights

Transmission of performers' property rights

Section 293

1. A performer's property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property.
2. A transmission of a performer's property rights by assignment, by testamentary disposition or by operation of law may be partial, so as to apply—
 - a. to one or more but not all of the acts a performer has the right to authorise or prohibit, or
 - b. to part but not the whole of the period for which the rights in the performance are to subsist.
3. An assignment of a performer's property rights, whether in whole or in part, is not effective unless it is in writing and signed by or on behalf of the assignor.

4. A licence granted by the owner of a performer's property rights is binding on every successor in title to his or her interest in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser and references in this Part to undertaking any act with or without the licence of the rightsowner shall be construed accordingly.
5. A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his or her interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser, and references in this Part to undertaking any act with or without the licence of the rightsowner shall be construed accordingly.

Waiver of rights

Section 316

1. Subject to subsection (3), any of the rights conferred by this Part may be waived.
2. A waiver made under this section shall be in writing and signed by the person waiving the right.
3. A waiver made under subsection (1)—
 - a. may relate to a specific performance or a recording thereof, to performances or recordings thereof of a specified description or to performances or recordings thereof generally, and may relate to existing or future performances or recordings thereof, and
 - b. may be conditional or unconditional, and may be expressed to be subject to revocation,
 and where a waiver is made in favour of the owner or prospective owner of the rights in the performance or recording thereof, or performances or recordings thereof, to which it relates, that waiver shall be presumed to extend to his or her licensees, successors in title or other persons, claiming under them unless a contrary intention is expressed.
4. Nothing in this Part shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights referred to in subsection (1).
5. It shall not be an infringement of any of the rights conferred by this Part for a person to undertake any act where the person entitled to the right conferred by this Part has consented to the use of those rights by that other person.

8. Additional information

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Netherlands

Neighbouring Rights Act⁴⁰

Copyright Act⁴¹

Copyright Contract Act 2015 (includes amendments to both Neighbouring Rights Act and Copyright Act)⁴²

Elements

1. Framework Provisions

1.1. Definitions

Section 1, subsection 1, subparagraph a (Neighbouring Rights Act): Definition of performer

1.2. National Treatment

2. Moral Rights

2.1 Paternity Right

Section 5, subsection 1, subparagraphs a, b (Neighbouring Rights Act)

2.2 Integrity Right

Section 5, subsection 1, subparagraphs c and d (Neighbouring Rights Act)

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 2, subsection 1, subparagraph a (Neighbouring Rights Act)

3.2. Broadcasting and Communication to the Public

Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 2, subsection 1, subparagraph b (Neighbouring Rights Act)

4.2. Right of Distribution

Section 2, subsection 1, subparagraph c (Neighbouring Rights Act)

⁴⁰ Relevant sections were collected from English translation of the Act, available at http://cultivate-cier.nl/?page_id=87.

An official version of the Act (Wet op de naburige rechten) is available in Dutch at http://wetten.overheid.nl/BWBR0005921/geldigheidsdatum_19-01-2016

⁴¹ Relevant sections were collected from English translation of the Act (as amended on April 1, 2006), available at <http://www.wipo.int/wipolex/en/details.jsp?id=9859>

An official version of Act (Auteurswet), available in Dutch at http://wetten.overheid.nl/BWBR0001886/geldigheidsdatum_20-01-2016

⁴² English translation of the Act is available at <http://www.ipmc.nl/en/topics/new-copyright-contract-law-netherlands>

4.3. Right of Rental (and lending)

Section 2, subsection 1, subparagraph c (Neighbouring Rights Act):

4.4. Right of Making Available to the Public of Fixed Performances

- No such provision; potentially part of Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

4.5. Right of Broadcasting

Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

4.6. Right of Communication to the Public

Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

4.7. Right of Public Performance

- No such provision; potentially part of Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 45d (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act)

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

Section 4 (Neighbouring Rights Act)

Section 45d, subsections 1, 2 (applied by a reference in Section 4 of Neighbouring Rights Act)

5.3. Any Other Right to Remuneration

Remuneration for lending

Section 2 (Neighbouring Rights Act)

Remuneration for each form of exploitation in employment contracts

Section 3 (Neighbouring Rights Act)

Remuneration for private copying

Section 16c (Copyright Act) (applied by a reference in Section 10 of the Neighbouring Rights Act)

Remuneration for education Use

Section 16, subsection 1, subparagraphs 1,2,4,5 (Copyright Act) (applied by a reference in Section 11 of the Neighbouring Rights Act)

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 45d, subsection 1 (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act)

6.2. Any Other Presumption

Section 45d, subsection 1 (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act): The transfer of the right to film a performance shall comprise the right to make it public in other way than renting, to reproduce it, to subtitle it and to dub the dialogue.

Section 45b (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act): A performer may not oppose the use of already made contribution.

Section 45g (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act): Performer shall retain copyright in his contribution where the latter constitutes a work that can be separated from the cinematographic work.

Section 45f (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act): Performer shall be assumed to have waived his right to oppose alterations.

7. Transfer of Rights

Section 9 (Neighbouring Rights Act)

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Obligation to conduct negotiations regarding authorization for rebroadcasting
Sections 14b, 14c, 14d (Neighbouring Rights Act)

Provisions of the Neighbouring Rights Act and Copyright Act, Netherlands

1. Framework provisions

1.1. Definitions

Section 1, subsection 1, subparagraph a (Neighbouring Rights Act)

1.
 - a. performer means an actor, singer, musician, dancer or any other person who acts, sings, delivers or otherwise performs a literary or artistic work, or an artist who performs a variety or circus act or a puppet show

2. Moral Rights

2.1. Paternity Right

Section 5, subsection 1, subparagraphs a, b (Neighbouring Rights Act)

1. A performer shall be entitled, even after he has assigned the right referred to in article 2:
 - a. to oppose the communication to the public of a performance without acknowledgement of his name or other designation as a performer, unless such opposition would be unreasonable;
 - b. to oppose the communication to the public of a performance under a name other than his own, and any alteration in the way in which he is designated, in so far as such name or designation is mentioned or communicated to the public in connection with the performance;

2.2. Integrity Right

Section 5, subsection 1, subparagraphs c, d (Neighbouring Rights Act)

1. A performer shall be entitled, even after he has assigned the right referred to in article 2:
 - c. to oppose any other alteration to the performance, unless the nature of the alteration is such that opposition would be unreasonable;
 - d. to oppose any distortion, mutilation or other impairment of the performance that could be prejudicial to his name or reputation or his dignity as a performer.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 2, subsection 1, subparagraph a (Neighbouring Rights Act)

1. A performer shall have the exclusive right to authorize one or more of the following acts:
 - a. the recording of a performance;

3.2. Broadcasting and Communication to the Public

Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

1. A performer shall have the exclusive right to authorize one or more of the following acts:
 - d. the broadcasting, rebroadcasting or communication to the public in any other way of a performance or a recording of a performance or a reproduction thereof.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 2, subsection 1, subparagraph b (Neighbouring Rights Act)

1. A performer shall have the exclusive right to authorize one or more of the following acts:
 - b. the reproduction of a recording of a performance;

4.2. Right of Distribution

Section 2, subsection 1, subparagraph c (Neighbouring Rights Act)

1. A performer shall have the exclusive right to authorize one or more of the following acts:
 - c. the sale, rental, lending, supply or otherwise bringing into circulation, or the importing, offering or having in stock for such purposes of a recording of a performance or a reproduction thereof;

4.3. Right of Rental (and lending)

Section 2, subsection 1, subparagraph c (Neighbouring Rights Act)

1. A performer shall have the exclusive right to authorize one or more of the following acts:

- c. the sale, rental, lending, supply or otherwise bringing into circulation, or the importing, offering or having in stock for such purposes of a recording of a performance or a reproduction thereof;

4.4. Right of Making Available to the Public of Fixed Performances

No such provision; potentially part of (if communication by any other way covers making available to the public)

Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

- 1. A performer shall have the exclusive right to authorize one or more of the following acts:
 - d. the broadcasting, rebroadcasting or communication to the public in any other way of a performance or a recording of a performance or a reproduction thereof.

4.5. Right of Broadcasting

Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

- 1.) A performer shall have the exclusive right to authorize one or more of the following acts:
 - d. the broadcasting, rebroadcasting or communication to the public in any other way of a performance or a recording of a performance or a reproduction thereof.

4.6. Right of Communication to the Public

Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

- 1. A performer shall have the exclusive right to authorize one or more of the following acts:
 - d. the broadcasting, rebroadcasting or communication to the public in any other way of a performance or a recording of a performance or a reproduction thereof.

4.7. Right of Public Performance

No such provision; potentially part of

Section 2, subsection 1, subparagraph d (Neighbouring Rights Act)

- 1. A performer shall have the exclusive right to authorize one or more of the following acts:

- d. the broadcasting, rebroadcasting or communication to the public in any other way of a performance or a recording of a performance or a reproduction thereof.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 4 (Neighbouring Rights Act)

1. Articles 45a up to and included 45g of the Copyright Act 1912 shall apply mutatis mutandis to any performance by a performer intended to contribute to the making of a cinematographic work as referred to in article 45a of said Act.
2. Article 45d, paragraphs 2 to 6, of the Copyright Act applies equally to a performer, as meant in the first paragraph, who plays a leading role in the film work.

Section 45d (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act)

1. Unless the makers and the producer of a film work have agreed otherwise in writing, the makers are deemed to have assigned to the producer, as from the time meant in Article 45c⁴³, the right to rent out the film work and to make it public in any other way, to reproduce it within the meaning of Article 14⁴⁴, to subtitle it and to dub the dialogue. The above shall not apply to whoever created the music for the film work and to whoever wrote the lyrics to the music. Irrespective of the manner of assignment, the producer owes the makers fair compensation for the assignment of rights and the exploitation of the film work. The right to fair compensation cannot be waived.

⁴³ Article 45c

A cinematographic work shall be deemed completed once it is ready for showing. Unless otherwise agreed in writing, the producer shall decide when the cinematographic work is ready for showing.

⁴⁴ Article 14

The reproduction of a literary, scientific or artistic work includes the fixation of the whole or part of the work on an object, which is intended to play a work or to show it.

2. Without prejudice to the provisions of Article 26a⁴⁵, anyone who broadcasts the film work, or who has it broadcast, or who communicates it to the public in any other manner, whether by wired or wireless connection, with the exception of making the film work available in such a manner that the film work is accessible to the members of the public in a place individually chosen by them, owes the principal director and the screenplay writer of the film work who has assigned these rights to the producer, proportional fair compensation. The right to fair compensation cannot be waived.
3. The right to the compensation meant in the second paragraph is exercised by representative legal persons which, according to their by laws, aim to represent the interests of principal directors or screenplay writers through the exercise of that right. Article 26a, paragraphs 2 and 3, apply equally.
4. The party who owes the compensation meant in the second paragraph is obliged to provide the legal person meant in the third paragraph with access to the documents or other data carriers required to establish the liability for and the level of the compensation and its distribution.
5. By or pursuant to an Order in Council, further rules may be set concerning the exercise of the right meant in the second paragraph.
6. The right to proportional fair compensation meant in the second paragraph does not apply to a film work if exploitation of it as such is not the main purpose.
7. Article 25d and Article 25e apply equally. Article 25c, paragraphs 2 to 6, and Article 25g apply equally to the fair compensation meant in the first paragraph.

45 Article 26a

1. The right to authorize the simultaneous, unaltered and unabridged broadcasting by a closed-circuit system, as referred to in article 1 sub g of the Wet op de Telecommunicatievoorzieningen, of a work incorporated in a radio or television program may be exercised exclusively by legal persons whose aim in accordance with their bylaws is to protect the interests of right-holders through the exercise of the right belonging to them as referred to above.

2. The legal persons referred to in paragraph 1 shall also be entitled to protect the interests of right-holders who have not instructed them to do so, where they are exercising the rights defined in their bylaws. Where there is more than one legal person whose aim according to their bylaws is to protect the interests of the same category of right-holders, the right-holder may designate one of them as being authorised to protect his interests. In the case of right-holders who have not issued instructions as referred to in the second sentence, the rights and obligations arising from an agreement concluded in respect of the broadcast referred to in paragraph 1 by a legal person entitled to exercise the same rights shall fully apply.

3. Claims against the legal person referred to in paragraph 1 in respect of the remunerations it has collected shall lapse 3 years after the beginning of the day following that on which the broadcast referred to in paragraph 1 took place.

4. This article shall not apply to rights as referred to in paragraph 1 belonging to a broadcasting organization in respect of its own broadcasts.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

Section 4 (Neighbouring Rights Act)

1. Articles 45a up to and included 45g of the Copyright Act 1912 shall apply mutatis mutandis to any performance by a performer intended to contribute to the making of a cinematographic work as referred to in article 45a of said Act.
2. Article 45d, paragraphs 2 to 6, of the Copyright Act applies equally to a performer, as meant in the first paragraph, who plays a leading role in the film work.

Section 45d, subsections 1, 2 (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act)

1. Unless the makers and the producer of a film work have agreed otherwise in writing, the makers are deemed to have assigned to the producer, as from the time meant in Article 45c⁴⁶, the right to rent out the film work and to make it public in any other way, to reproduce it within the meaning of Article 14⁴⁷, to subtitle it and to dub the dialogue. The above shall not apply to whoever created the music for the film work and to whoever wrote the lyrics to the music. Irrespective of the manner of assignment, the producer owes the makers fair compensation for the assignment of rights and the exploitation of the film work. The right to fair compensation cannot be waived.
2. Without prejudice to the provisions of Article 26a⁴⁸, anyone who broadcasts the film work, or who has it broadcast, or who communicates it to the public in any other manner, whether by wired or wireless connection, with the ex-

46 Article 45c

A cinematographic work shall be deemed completed once it is ready for showing. Unless otherwise agreed in writing, the producer shall decide when the cinematographic work is ready for showing.

47 Article 14

The reproduction of a literary, scientific or artistic work includes the fixation of the whole or part of the work on an object, which is intended to play a work or to show it.

48 Article 26a

(1) The right to authorize the simultaneous, unaltered and unabridged broadcasting by a closed-circuit system, as referred to in article 1 sub g of the Wet op de Telecommunicatievoorzieningen, of a work incorporated in a radio or television program may be exercised exclusively by legal persons whose aim in accordance with their bylaws is to protect the interests of right-holders through the exercise of the right belonging to them as referred to above.

(2) The legal persons referred to in paragraph 1 shall also be entitled to protect the interests of right-holders who have not instructed them to do so, where they are exercising the rights defined in their bylaws. Where there is more than one legal person whose aim according to their bylaws is to protect the interests of the same category of right-holders, the right-holder may designate one of them as being authorised to protect his interests. In the case of right-holders who have not issued instructions as referred to in the second sentence, the rights and obligations arising from an agreement concluded in respect of the broadcast referred to in paragraph 1 by a legal person entitled to exercise the same rights shall fully apply.

(3) Claims against the legal person referred to in paragraph 1 in respect of the remunerations it has collected shall lapse 3 years after the beginning of the day following that on which the broadcast referred to in paragraph 1 took place.

(4) This article shall not apply to rights as referred to in paragraph 1 belonging to a broadcasting organization in respect of its own broadcasts.

ception of making the film work available in such a manner that the film work is accessible to the members of the public in a place individually chosen by them, owes the principal director and the screenplay writer of the film work who has assigned these rights to the producer, proportional fair compensation. The right to fair compensation cannot be waived.

5.3. Any Other Right to Remuneration

Section 2 (Neighbouring Rights Act)

1. A performer shall have the exclusive right to authorize one or more of the following acts:
 - a. the recording of a performance;
 - b. the reproduction of a recording of a performance;
 - c. the sale, rental, lending, supply or otherwise bringing into circulation, or the importing, offering or having in stock for such purposes of a recording of a performance or a reproduction thereof;
 - d. the broadcasting, rebroadcasting or communication to the public in any other way of a performance or a recording of a performance or a reproduction thereof.
2. Where a reproduction of a recording of a performance has been brought into circulation for the first time by or with the consent of the holder of the exclusive right referred to in paragraph 1, in a Member State of the European Union or in a State party to the Agreement on the European Economic Area of 2 May 1992, the acquirer of such reproduction does not infringe that exclusive right by carrying out, with respect thereto, the acts referred to in paragraph 1, sub c, with the exception of rental and lending.
3. Without prejudice to the provisions of paragraph 2, the lending of a recording of a performance or a reproduction thereof, as referred to in paragraph 2, shall be permitted provided the person doing or arranging the lending pays an equitable remuneration.
4. Educational and research establishments, the libraries attached to them, and the Koninklijke Bibliotheek shall be exempt from payment of the remuneration as referred to in paragraph 3.
5. Libraries funded by the Libraries for the Blind and Visually Impaired Fund shall be exempt from payment of the remuneration referred to in paragraph 3 in respect of items lent to blind and visually impaired persons registered with the libraries in question.
6. Payment of the remuneration referred to in paragraph 3 shall not be required if the person subject subject to payment can demonstrate that the holder of the exclusive right has waived the right to an equitable remuneration. The holder of the exclusive right shall notify the legal persons referred to in articles 15a and 15b of the waiver in writing.

7. With regard to the provisions of paragraph 1, sub d, communication to the public shall also mean a performance that takes place in a restricted circle, except where this is confined to relatives, friends or equivalent persons and no form of payment whatsoever is made for attendance.
8. Performing shall not include any performance which is exclusively for the purposes of education provided on behalf of the public authorities or a non-profit legal person, in so far as such a performance forms part of the school work plan, curriculum or college work plan, or serves a scientific purpose.
9. The rebroadcasting of a programme by the organisation making the original broadcast shall not be deemed a separate communication to the public.

Section 3 (Neighbouring Rights Act)

An employer shall be entitled to exploit the rights of a performer as referred to in article 2, where this has been agreed between the parties or derives from the nature of the employment contract concluded between them, from custom or from the requirements of reasonableness and fairness. Unless it has been agreed otherwise or arises otherwise from the nature of the contract, from custom or from the requirements of reasonableness and fairness, the employer shall pay the performer or his assignee an equitable remuneration for each form of exploitation of the latter's rights. The employer shall respect the rights of the performer as referred to in article 5.

Section 16c (Copyright Act) (applied by a reference in Section 10 of the Neighbouring Rights Act)

1. Reproduction of the work or any part thereof shall not be regarded as an infringement of the copyright in a literary, scientific or artistic work provided that the reproduction is carried out without any direct or indirect commercial motivation and is intended exclusively for personal exercise, study or use by the natural person who made the reproduction.
2. The manufacturer or the importer of any object intended to allow a work such as specified in paragraph 1 to be heard, to show it or to relate it will be due to make a fair payment to the author or his successor in title.

Section 16, subsection 1, subparagraphs 1,2,4,5 (Copyright Act) (applied by a reference in Section 11 of the Neighbouring Rights Act)

1. Reproduction or publication of parts of a literary, scientific or artistic work exclusively for use as illustrations for teaching purposes, so far as justified by the intended and non-commercial purpose will not be regarded as an infringement of copyright, provided that:
 - 1) the work from which the part is taken has been published lawfully;
 - 2) the adoption is in accordance with what might reasonably be accepted under the rules of social custom;

- 4) so far as reasonably possible the source, including the author's name, has been clearly indicated; and
- 5) a fair payment is made to the author or his right-holders.

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 45d, subsection 1 (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act)

1. Unless the makers and the producer of a film work have agreed otherwise in writing, the makers are deemed to have assigned to the producer, as from the time meant in Article 45c⁴⁹, the right to rent out the film work and to make it public in any other way, to reproduce it within the meaning of Article 14⁵⁰, to subtitle it and to dub the dialogue.

6.2. Any Other Presumption

Section 45d, subsection 1 (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act)

1. Unless the makers and the producer of a film work have agreed otherwise in writing, the makers are deemed to have assigned to the producer, as from the time meant in Article 45c⁵¹, the right to rent out the film work and to make it public in any other way, to reproduce it within the meaning of Article 14⁵², to subtitle it and to dub the dialogue.

Section 45b (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act)

Where one of the authors is unwilling or unable to complete his contribution to the cinematographic work, he may not oppose the use by the producer of that contribution, in

49 **Article 45c**

A cinematographic work shall be deemed completed once it is ready for showing. Unless otherwise agreed in writing, the producer shall decide when the cinematographic work is ready for showing.

50 **Article 14**

The reproduction of a literary, scientific or artistic work includes the fixation of the whole or part of the work on an object, which is intended to play a work or to show it.

51 **Article 45c**

A cinematographic work shall be deemed completed once it is ready for showing. Unless otherwise agreed in writing, the producer shall decide when the cinematographic work is ready for showing.

52 **Article 14**

The reproduction of a literary, scientific or artistic work includes the fixation of the whole or part of the work on an object, which is intended to play a work or to show it.

so far as it has already been created, for the purposes of completing the cinematographic work, unless otherwise agreed in writing. He shall be considered the author as meant in article 45a of the contribution that he has made.

Section 45g (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act)

Each author shall, unless otherwise agreed in writing, retain copyright in his contribution where the latter constitutes a work that can be separated from the cinematographic work. After the moment referred to in article 45c, each author may, unless otherwise agreed in writing, communicate his contribution to the public and reproduce it separately, provided that he does not thereby prejudice the exploitation of the cinematographic work.

Section 45f (Copyright Act) (applied by a reference in Section 4 of Neighbouring Rights Act)

The author shall be assumed to have waived the right to oppose alterations as referred to in article 25, paragraph 1, sub c, to his contribution vis-à-vis the producer, unless otherwise agreed in writing.

7. Transfer of Rights

Section 9 (Neighbouring Rights Act)

1. The rights granted by this Act pass by succession. These rights are transmissible by assignment in whole or in part. As regards the performing of acts as meant in Articles 2, 6, 7a and 8, a licence may be granted for the whole or part of the exclusive right.
2. Whole or partial assignment, as well as the grant of an exclusive licence, may only be effected by means of a deed executed for that purpose.
3. The assignment or the grant of an exclusive licence by the performer or the natural person who, as an heir or legatee, has acquired the exclusive right meant in Article 2 shall comprise only the rights that are stated in this deed or that necessarily derive from the nature or the purpose of the title.

8. Additional Information

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Obligation to conduct negotiations regarding authorization for rebroadcasting

Section 14b (Neighbouring Rights Act)

Parties shall be obliged to conduct negotiations regarding authorization for rebroadcasting, as referred to in article 14a, paragraph 1, in good faith and shall not prevent or hinder negotiation without valid justification.

Section 14c (Neighbouring Rights Act)

1. If agreement cannot be reached on rebroadcasting, as referred to in article 14a, paragraph 1, each party may call upon the assistance of one or more mediators. The mediators shall be selected in such a way that their independence and impartiality are beyond reasonable doubt.
2. The mediators shall assist in the conducting of the negotiations and shall be entitled to serve notice of the proposals to the parties. Each party may serve notice to the other party of its objections to such proposals within three months of the date of receipt of the proposals. The mediators' proposals shall be binding on the parties unless one of them has served notice of its objections within the time-limit referred to in the previous sentence. Notice of the proposals and the objections shall be served on the parties in accordance with the provisions of sixth division of the first title of the first book of the Code of Civil Procedure.

Section 14d (Neighbouring Rights Act)

Articles 14b and 14c shall apply *mutatis mutandis* to the unaltered and unabridged rebroadcasting of a broadcasting organisation's programme by a cable broadcasting installation as referred to in article 1.1 of the Media Act 2008.

Spain

Intellectual Property Act⁵³

Elements

1. Framework Provisions

1.1. Definitions

Section 105: Definition of performer

1.2. National Treatment

2. Moral Rights

2.1 Paternity right

Section 113, subsection 1

2.2 Integrity right

Section 113, subsections 1, 2

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 106

3.2. Broadcasting and Communication to the Public

Section 108, subsection 1, subparagraph a

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 107

4.2. Right of Distribution

Section 109

4.3. Right of Rental (and lending)

Section 109, subsection 1

4.4. Right of Making Available to the Public of Fixed Performances

Section 108, subsection 1, subparagraph b

4.5. Right of Broadcasting

- No such provision.

⁵³ Relevant sections were collected from English translation of the Act (status as of 2012), available at http://www.mjusticia.gob.es/cs/Satellite/1292426984404?blobheader=application%2Fpdf&blob-headername1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DThe_Intellectual_Property_Act_%28Ley_de_Propiedad_Intellectual%29.PDF

A current version of the Act (as last updated on 5/11/2014), available in Spanish at <https://www.boe.es/buscar/act.php?id=BOE-A-1996-8930>

4.6. Right of Communication to the Public

- No such provision.

4.7. Right of Public Performance

- No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 109, subsection 3, subparagraph 2

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

Section 108, subsection 5

5.3.1 Any Other Right to Remuneration

Communication to the public (remuneration for assignment of right of making available)

Section 108, subsection 3

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 109, subsection 3, subparagraph 1

6.2. Any Other Presumption

Communication to the public

Section 108, subsections 1(b), 2: Presumption of transfer of right of making available to the public in case of film production agreement.

Employment of Free-lance Contract

Section 110: Presumption of transfer of rights to license reproduction and communication to the public in employment or freelance contracts.

7. Transfer of Rights

Reproduction

Section 107, subsection 3

Distribution

Section 109, subsection 1

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Provisions of the Intellectual Property Act, Spain

1. Framework Provisions

1.1. Definitions

Definition of Performer

Section 105

“Performer” shall be construed as the person who represents, sings, reads, recites, interprets or executes a work in any form. The director of a stage performance and the conductor of an orchestra shall have the rights conferred on performers under this Title.

2. Moral Rights

2.1 Paternity Right

Moral Rights

Section 113, subsection 1

1. A performer shall enjoy the right which cannot be waived or assigned to have his name mentioned in connection with his performances and to object, except when the omission is a consequence of the way they are used and to oppose any distortion, mutilation or any other act in relation to his performance that might adversely affect his standing or reputation.

2.2 Integrity Right

Moral Rights

Section 113, subsections 1, 2

1. A performer shall enjoy the right which cannot be waived or assigned to have his name mentioned in connection with his performances and to object, except when the omission is a consequence of the way they are used and to oppose any distortion, mutilation or any other act in relation to his performance that might adversely affect his standing or reputation.
2. The express licence of the performer shall be necessary for the doubling of his performance in his own language.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Fixation

Section 106

1. The performer shall have the exclusive right to license the fixation of his performances.
2. Such licence shall be granted in writing.

3.2. Broadcasting and Communication to the Public

Communication to the public

Section 108, subsection 1, subparagraph a

1. The performer shall have the exclusive right to authorise the communication to the public:
 - a. Of his performances, except where any such performance constitutes in itself a performance transmitted by broadcasting or made from a previously authorised fixation;In both cases, such licence shall be granted in writing.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Reproduction

Section 107

1. The performer shall have the exclusive right to license the direct or indirect reproduction of fixations of his performances, pursuant to the definition established in Article 18⁵⁴.
2. Such licence shall be granted in writing.
3. The said right may be assigned, transferred or be licensed by contract.

4.2. Right of Distribution

Distribution

Section 109, subsections 1, 2, 4

1. The performer shall have the exclusive right, in relation to the fixation of his performances, to license the distribution thereof according to the definition

⁵⁴ Section 18: Reproduction shall be construed as the fixation, directly or indirectly, permanently or provisionally, in any mode or form, of all a work or part thereof, enabling it to be communicated or copied.

laid down in Article 19.1 of this Act.⁵⁵ That right may be assigned or transferred or be licensed by contract.

2. If the distribution takes place by means of sale or other form of conveyance of property within the area of the European Union, the said right shall be exhausted on the first such sale, but only in respect of successive sales or conveyances of property effected within the area by the rightholder or with his consent
4. For the purposes of this Title, "lending of fixations of performances" shall be construed as making them available for use for a limited time without direct or indirect economic or commercial advantage, provided that the said lending takes place through establishments accessible to the public

It shall be construed that there is no direct or indirect economic or commercial advantage when the lending effected by an establishment accessible to the public gives rise to the payment of a sum not exceeding the amount necessary to cover operating expenses.

The operations mentioned in the second Paragraph of Paragraph 3 above, and those conducted between establishments accessible to the public, shall be excluded from the definition of lending.

4.3. Right of Rental (and lending)

Distribution

Section 109, subsection 1

1. The performer shall have the exclusive right, in relation to the fixation of his performances, to license the distribution thereof according to the definition laid down in Article 19.1 of this Act.⁵⁶ That right may be assigned or transferred or be licensed by contract.

4.4. Right of Making Available to the Public of Fixed Performances

Communication to the public

Section 108, subsection 1, subparagraph b

1. The performer shall have the exclusive right to authorise the communication to the public:

⁵⁵ **Section 19.1:** Distribution shall be construed as the making available to the public of the original or of copies of the work, in a tangible support, by means of sale, rental or lending or in any other manner whatsoever.

⁵⁶ **Section 19.1:** Distribution shall be construed as the making available to the public of the original or of copies of the work, in a tangible support, by means of sale, rental or lending or in any other manner whatsoever.

- b. In any case, of the fixations of his performances, by means of making available to the public in the manner laid down in Article 20.2.i)⁵⁷;

In both cases, such licence shall be granted in writing.

If the communication to the public takes place by satellite or cable and in the manner provided for in Paragraphs 3 and 4 of Article 20 and relevant provisions of this Act, such provisions shall apply

4.5. Right of Broadcasting

No such provision.

4.6. Right of Communication to the Public

No such provision.

4.7. Right of Public Performance

No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Distribution

Section 109, subsection 3, subparagraph 2

3. For the purposes of this Title, "rental of fixations of performances" shall be construed as making them available for use during a limited time and for direct or indirect economic or commercial advantage.

Making available for the purposes of display, for communication to the public by means of phonograms or audiovisual recordings, including excerpts of either, and for

⁵⁷ **Section 20.2.i:** Making works available to the public, through wire or wireless procedures, so that any person may access such works from the place and at the time such person may choose.

on-the-spot consultation, shall be excluded from the concept of rental in the following circumstances:

- 2) The performer who has assigned or transferred to a producer of phonograms or audiovisual recordings his rental rights in a phonogram, or an original or copy of an audiovisual recording, shall preserve the unwaivable right to receive equitable remuneration for the rental thereof. Such remuneration shall be payable by those who conduct the operations of rental to the public of phonograms or audiovisual recordings in their capacity as successors in title to the corresponding rightholders to license such rental, and shall come into effect as from 1st January 1997.

The right provided for in the foregoing Paragraph shall be exercised through societies for the collection of intellectual property rights.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

Communication to the public

Section 108, subsection 5

5. The users of the audiovisual recordings that are used for the acts of communication to the public provided for in Subparagraphs f) and g) of Paragraph 2 of Article 20 of this Act⁵⁸ shall be under the obligation to pay the remuneration provided to the performers and to the producers of audiovisual recordings, pursuant to the general tariffs established by the relevant collecting societies.

The users of audiovisual recordings that are used for any act of communication to the public different from those referred to in the foregoing Paragraph shall also be under the obligation to pay an equitable remuneration to the performers, without prejudice to the provisions contained in Paragraph 3.

⁵⁸ **Section 20**, subsection 2, subparagraphs f, g:

f) The retransmission of the broadcast work by any of the media mentioned in the foregoing Subparagraphs, and by a transmitting body different from the original one, of the broadcast work. Retransmission by cable shall be construed as the simultaneous, unaltered and unabridged retransmission, by cable or microwave system of the original broadcasts or transmissions, including those effected by satellite, of radio or television programmes intended for reception by the public;

g) The emission or transmission of the broadcast work, by means of any appropriate instrument, in a place accessible to the public;

5.3. Any Other Right to Remuneration

Communication to the public

Section 108, subsection 3

3. If the performer has assigned or transferred to a phonogram or audiovisual recordings producer his right of making available to the public to which Paragraph 1.b) refers with reference to a phonogram or an original or a copy of an audiovisual recording, he shall preserve his unwaivable right a equitable remuneration to be received by whom makes it available to the public.

6. Presumptions

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Distribution

Section 109, subsection 3, subparagraph 1

3. For the purposes of this Title, "rental of fixations of performances" shall be construed as making them available for use during a limited time and for direct or indirect economic or commercial advantage.

Making available for the purposes of display, for communication to the public by means of phonograms or audiovisual recordings, including excerpts of either, and for on-the-spot consultation, shall be excluded from the concept of rental in the following circumstances:

- 1) Where the performer, either individually or with others, concludes contracts with a producer of audiovisual recordings, for the production of such recordings, it shall be presumed that, unless otherwise agreed in the contract and subject to the unwaivable right to equitable remuneration referred to in the following Paragraph, he has assigned his rental rights.

6.2. Any Other Presumption

Communication to the public

Section 108, subsections 1(b), 2

1. The performer shall have the exclusive right to authorise the communication to the public:

- b. In any case, of the fixations of his performances, by means of making available to the public in the manner laid down in Article 20.2.i)⁵⁹;

In both cases, such licence shall be granted in writing.

If the communication to the public takes place by satellite or cable and in the manner provided for in Paragraphs 3 and 4 of Article 20 and relevant provisions of this Act, such provisions shall apply

2. If the performer enters into contracts, either individually or collectively, with a phonogram or audiovisual recordings producer referring to the production of these it shall be assumed, except for agreement to the contrary in the contract and without prejudice to the unwaivable right to equitable remuneration to which the following Paragraph refers, that he has assigned his right to making available to the public to which Paragraph 1.b) refers.

Employment or Free-lance Contract

Section 110

Where the performance is given in compliance with an employment or free-lance contract, it shall be understood, unless otherwise specified, that the employer or commissioning party acquires therein such exclusive rights to license reproduction and communication to the public as are provided for under this Title and may be deduced from the nature and subject of the contract.

The provisions of the foregoing Paragraph shall not apply to the remuneration rights recognised in Paragraphs 3, 4 and 5 of Article 108 of this Act.

7. Transfer of Rights

Reproduction

Section 107, subsection 3

3. The said right may be assigned, transferred or be licensed by contract.

⁵⁹ **Section 20.2.i:** Making works available to the public, through wire or wireless procedures, so that any person may access such works from the place and at the time such person may choose.

Distribution

Section 109

1. The performer shall have the exclusive right, in relation to the fixation of his performances, to license the distribution thereof according to the definition laid down in Article 19.1 of this Act. That right may be assigned or transferred or be licensed by contract.

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Switzerland

Federal Act of October 9, 1992 on Copyright and Related Rights⁶⁰

Elements

1. Framework Provisions

1.1. Definitions

Section 33, subsection 1: Definition of performer

1.2. National Treatment

2. Moral Rights

2.1 Paternity Right

Section 33a, subsection 1

2.2 Integrity Right

Section 33a, subsection 2

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 33, subsection 2, subparagraph c

3.2. Broadcasting and Communication to the Public

Section 33, subsection 2, subparagraphs b, e

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 33, subsection 2, subparagraph c

4.2. Right of Distribution

Section 33, subsection 2, subparagraph d

4.3. Right of Rental (and lending)

- No such explicit provision; part of Section 33, subsection 2, subparagraph d.

4.4. Right of Making Available to the Public of Fixed Performances

Section 33, subsection 2, subparagraph a

⁶⁰ The Act (status as of January 1, 2011) is available in English at <http://www.wipo.int/wipolex/en/details.jsp?id=11899>.

“On 11 December 2015 the Federal Council submitted a preliminary draft for the modernization of the copyright for consultation. It includes combating internet piracy more effectively without criminalising the users of such services. At the same time, the legal rules that apply to the latest technological developments are to be amended. The draft amendment of the Copyright Act (CopA) is guided by the recommendations of the copyright working group (AGUR12). Two World Intellectual Property Organization (WIPO) treaties were also sent for consultation at the same time.” Source: <https://www.ige.ch/en/copyright/modernisierung-des-urheberrechts-2015.html?type=98&cHash=fweihubqhwef>. Visited on 2.5.2016.

4.5. Right of Broadcasting

- No such provision; potentially part of Section 33, subsection 2, item e.

4.6. Right of Communication to the Public

- No such provision; potentially part of Section 33, subsection 2, item e.

4.7. Right of Public Performance

- No such provision; potentially part of Section 33, subsection 2, item e.

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

- Section 13 (applied by a reference in section 38)

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- Section 35

5.3. Any Other Right to Remuneration

Rental copies of works

Section 13 (applied by a reference in section 38): Remuneration for making available for fee

Remuneration for private use

Section 20 (applied by a reference in Section 38)

Use of works by people with disabilities

Section 24c (applied by a reference in Section 38):

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

- No such provision.

6.2. Any Other Presumption

- No Such provision.

7. Transfer of Rights

Assignment of rights

Section 16 (applied by a reference in section 38)

Principle of exhaustion

Section 12, subsection 1 (applied by a reference in section 38)

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Provisions of the Federal Act of October 9, 1992 on Copyright and Related Rights, Switzerland

1. Framework provisions

1.1. Definitions

1.1.1 Definition of performer

Rights of performers

Section 33, subsection 1

1. A performer is any natural person who performs a work or an expression of folklore or who participates artistically in the performance of such a work.

2. Moral Rights

2.1 Paternity Right

Moral rights of performers

Section 33a, subsection 1

1. Performers have the right to be recognised as such when they perform a work.

2.2 Integrity Right

Moral rights of performers

Section 33a, subsection 2

2. The protection of performers from derogatory treatment of their performances is subject to Articles 28-28I of the Swiss Civil Code.

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Rights of performers

Section 33, subsection 2, subparagraph c

2. Performers have the following exclusive right in respect of their performance or its fixation:
 - c. to fix their performance on blank media and to reproduce such fixations;

3.2. Broadcasting and Communication to the Public

Rights of performers

Section 33, subsection 2, subparagraphs b, e

2. Performers have the following exclusive right in respect of their performance or its fixation:
 - b. to broadcast their performance by radio, television or similar method, including by wire, as well as to retransmit the broadcast performance by means of technical equipment, the provider of which is not the original broadcasting organisation;
 - e. to make their performance perceptible when they are broadcast, retransmitted or made available to the public.

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Rights of performers

Section 33, subsection 2, subparagraph c

2. Performers have the following exclusive right in respect of their performance or its fixation:
 - c. to fix their performance on blank media and to reproduce such fixations;

4.2. Right of Distribution

Rights of performers

Section 33, subsection 2, subparagraph d

2. Performers have the following exclusive right in respect of their performance or its fixation:
 - d. to offer, transfer or otherwise distribute copies of their performance;

4.3. Right of Rental (and lending)

No such explicit provision; part of

Rights of performers

Section 33, subsection 2, subparagraph d

2. Performers have the following exclusive right in respect of their performance or its fixation:
 - d. to offer, transfer or otherwise distribute copies of their performance;

4.4. Right of Making Available to the Public of Fixed Performances

Rights of performers

Section 33, subsection 2, subparagraph a

2. Performers have the following exclusive right in respect of their performance or its fixation:
 - a. to make their performance perceptible in some place other than that in which it was performed, either directly or through any kind of medium, in such a way that persons may access it from a place and at a time individually chosen by them.

4.5. Right of Broadcasting⁶¹

No such explicit provision; potentially part of:

Rights of performers

Section 33, subsection 2, subparagraph e

2. Performers have the following exclusive right in respect of their performance or its fixation;
 - e. to make their performance perceptible when they are broadcast, retransmitted or made available to the public.
Original in French: "e. de faire voir ou entendre sa prestation, ou la fixation de celle-ci, lorsqu'elle est diffusée, retransmise ou mise à disposition."

4.6. Right of Communication to the Public

No such explicit provision; potentially part of Section 33, subsection 2, subparagraph e

4.7. Right of Public Performance

No such explicit provision; potentially part of Section 33, subsection 2, subparagraph e

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

61 For purposes of copyright, the rights of broadcasting and "making perceptible" are defined separately in Article 10.2 d) and f):

- to broadcast the work by radio, television or similar means, including by wire;

- e.to retransmit works by means of technical equipment, the provider of which is not the original broadcasting organisation, in particular including by wire;f.2to make works made available, broadcast and retransmitted perceptible.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 13 (applied by a reference in section 38)

1. Any person who rents or otherwise makes available for a fee copies of literary or artistic works owes remuneration to the author.
2. No obligation to pay remuneration exists for:
 - 1) works of architecture;
 - 2) copies of works of applied art;
 - 3) copies of works rented or lent for a contractually agreed use of copyright.
3. Claims for remuneration may only be asserted by the approved collective rights management organisations (Art. 40 and seq.)
4. This Article does not apply to computer programs. The exclusive right under Article 10 paragraph 3 remains reserved.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

Right to remuneration for the use of phonograms and audiovisual fixations

Section 35

1. If commercially available phonograms or audiovisual fixations are used for the purpose of broadcasting, retransmission, public reception (Article 33 para. 2 let. e) or performance, the performers have a right to remuneration.
2. The producer of the medium thus used is entitled to an equitable share of the remuneration of the performers.
3. Claims for remuneration may only be asserted by the authorised collective rights management organisations.
4. Foreign performers who are not habitually resident in Switzerland only have a right to remuneration if the state of which they are a national affords a corresponding right to Swiss nationals.

5.3. Any Other Right to Remuneration

Rental copies of works

Section 13 (applied by a reference in section 38)

1. Any person who rents or otherwise makes available for a fee copies of literary or artistic works owes remuneration to the author.
2. No obligation to pay remuneration exists for:
 - 1) works of architecture;
 - 2) copies of works of applied art;
 - 3) copies of works rented or lent for a contractually agreed use of copyright.

3. Claims for remuneration may only be asserted by the approved collective rights management organisations (Art. 40 and seq.)
4. This Article does not apply to computer programs. The exclusive right under Article 10 paragraph 3 remains reserved.

Remuneration for private use

Section 20 (applied by a reference in Section 38)

1. The use of the work within a circle of persons under Article 19 paragraph 1 letter a does not give rise to a right of remuneration subject to paragraph 3.
2. Any person who reproduces works in any manner for private use under Article 19 paragraph 1 letter b or letter c, or any person who does so as a third party under Article 19 paragraph 2 owes remuneration to the author.
3. Any person who produces or imports blank media suitable for the fixation of works owes remuneration to the author for the use of the works under Article 19.
4. Claims for remuneration may only be asserted by the authorised collective rights management organisations.

Use of works by people with disabilities

Section 24c (applied by a reference in Section 38)

1. A work may be reproduced in a form which is accessible to people with disabilities insofar as the work cannot be perceived by the senses, or can only be perceived by the senses with difficulty, in its already published form.
2. Such copies of the work may only be produced and placed on the market for non-commercial purposes, and only for the use of people with disabilities.
3. The author has the right to remuneration for the reproduction and distribution of his work in a form accessible to people with disabilities other than in the case of the production of individual copies of the work.
4. Claims for remuneration may only be asserted by the authorised collective rights management organisations.

6. Presumptions

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

No such provision.

6.2. Any Other Presumption

7. Transfer of Rights

Assignment of rights

Section 16 (applied by a reference in section 38)

1. Copyright is assignable or may be inherited.
2. The assignment of a right subsisting in the copyright does not include the assignment of other partial rights, unless such was agreed.
3. The assignment of the ownership of a copy of a work does not include the right to exploit the copyright, even in the case of an original work.

Principle of exhaustion

Section 12, subsection 1 (applied by a reference in section 38)

1. Where the author has transferred the rights to a copy of a work or has consented to such a transfer, these rights may subsequently be further transferred or the copy otherwise distributed.

(1bis) Copies of audiovisual works may not be further transferred or rented as long as the author is thereby impaired in exercising his right of performance (Art. 10 para. 2 let. C).

8. Additional Information

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

United Kingdom

copyright, Designs and Patents Act⁶²

Elements

1. Framework Provisions

1.1. Definitions

Section 180, subsection 2: Definition of performer

1.2. National Treatment

2. Moral Rights

2.1 Paternity Right

Section 205C

2.2 Integrity Right

Section 205F

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Section 182, subsection 1, subparagraphs a, c

3.2. Broadcasting and Communication to the Public

Section 182, subsection 1, subparagraph b

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Section 182A

4.2. Right of Distribution

Section 182B

4.3. Right of Rental (and lending)

Section 182C

4.4. Right of Making Available to the Public of Fixed Performances

Section 182CA

4.5. Right of Broadcasting

- No such provision.

⁶² The Copyright, Designs and Patents Act 1988 has been amended on a number of occasions since it came into force on 1 August 1989, but the amending laws have not been officially consolidated into a single text. The following document shows the copyright only sections of the Copyright, Designs and Patents Act 1988 (as amended or introduced by the relevant legislation (non-binding). Last updated on 2 December 2014, available at <https://www.gov.uk/government/publications/copyright-acts-and-related-laws>

4.6. Right of Communication to the Public

- No such provision.

4.7. Right of Public Performance

- No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

- No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Section 191G

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

- No such provision.

5.3. Any Other Right to Remuneration

Reception and re-transmission of wireless broadcast by cable

Schedule 2: Rights in Performances: Permitted Acts (applied by a reference in Section 189), Section 19

6. Presumptions (unless otherwise agreed)

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Section 191F

6.2. Any Other Presumption

- No other presumptions.

7. Transfer of Rights

Assignment and licenses

Section 191B

Prospective ownership of a performer's property rights

Section 191C

Performer's property right to pass under will with unpublished original recording

Section 191E

Performers' non-property rights

Section 192A

Moral Rights not Assignable

Section 205L

Transmission of Moral Rights on Death

Section 205M

8. Additional Information (if available)

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities

Provisions of the Copyright, Designs and Patents Act, United Kingdom

1. Framework provisions

1.1. Definitions

Rights conferred on performers and persons having recording rights

Section 180, subsection 2

In this part--

"performance" means--

- a. a dramatic performance (which includes dance and mime),
- b. a musical performance,
- c. a reading or recitation of a literary work, or
- d. a performance of a variety act or any similar presentation,

which is, or so far as it is, a live performance given by one or more individuals;

2. Moral Rights

2.1 Paternity Right

Right to be identified as performer

Section 205C

1. Whenever a person—
 - a. produces or puts on a qualifying performance that is given in public,
 - b. broadcasts live a qualifying performance,
 - c. communicates to the public a sound recording of a qualifying performance, or
 - d. issues to the public copies of such a recording,

the performer has the right to be identified as such.

2. The right of the performer under this section is--
 - a. in the case of a performance that is given in public, to be identified in any programme accompanying the performance or in some other manner likely to bring his identity to the notice of a person seeing or hearing the performance,
 - b. in the case of a performance that is broadcast, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the broadcast,

- c. in the case of a sound recording that is communicated to the public, to be identified in a manner likely to bring his identity to the notice of a person hearing the communication,
- d. in the case of a sound recording that is issued to the public, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy,

or (in any of the above cases) to be identified in such other manner as may be agreed between the performer and the person mentioned in subsection (1).

- 3. The right conferred by this section in relation to a performance given by a group (or so much of a performance as is given by a group) is not infringed--
 - a. in a case falling within paragraph (a), (b) or (c) of subsection (2), or
 - b. in a case falling within paragraph (d) of that subsection in which it is not reasonably practicable for each member of the group to be identified,

if the group itself is identified as specified in subsection (2).

- 4. In this section "group" means two or more performers who have a particular name by which they may be identified collectively.
- 5. If the assertion under section 205D specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.
- 6. This section has effect subject to section 205E (exceptions to right).

2.2. Integrity Right

Right to object to derogatory treatment of performance

Section 205F

- 1. The performer of a qualifying performance has a right which is infringed if--
 - a. the performance is broadcast live, or
 - b. by means of a sound recording the performance is played in public or communicated to the public,

with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

- 2. This section has effect subject to section 205G (exceptions to right).

3. Live Performances – Exclusive Rights

3.1. Right of Fixation

Consent required for recording, &c of live performance

Section 182, subsection 1, subparagraphs a, c

1. A performer's rights are infringed by a person who, without his consent--
 - a. makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance,
 - c. makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of the live performance.

3.2. Broadcasting and Communication to the Public

Consent required for recording, &c of live performance

Section 182, subsection 1, subparagraph b

1. A performer's rights are infringed by a person who, without his consent--
 - b. broadcasts live the whole or any substantial part of a qualifying performance,

4. Fixed Performances – Exclusive Rights

4.1. Right of Reproduction

Consent required for copying of recording

Section 182A

1. A performer's rights are infringed by a person who, without his consent, makes a copy of a recording of the whole or any substantial part of a qualifying performance.
- (1A) In subsection (1), making a copy of a recording includes making a copy which is transient or is incidental to some other use of the original recording.
2. It is immaterial whether the copy is made directly or indirectly
3. The right of a performer under this section to authorise or prohibit the making of such copies is referred to in this Chapter as "reproduction right".

4.2. Right of Distribution

Consent required for issue of copies to the public

Section 182B

1. A performer's rights are infringed by a person who, without his consent, issues to the public copies of a recording of the whole or any substantial part of a qualifying performance.
2. References in this Part to the issue to the public of copies of a recording are to--

- a. the act of putting into circulation in the EEA copies not previously put into circulation in the EEA by or with the consent of the performer, or
 - b. the act of putting into circulation outside the EEA copies not previously put into circulation in the EEA or elsewhere.
3. References in this Part to the issue to the public of copies of a recording do not include--
- a. any subsequent distribution, sale, hiring or loan of copies previously put into circulation (but see section 182C: consent required for rental or lending), or
 - b. any subsequent importation of such copies into the United Kingdom or another EEA state,
- except so far as paragraph (a) of subsection (2) applies to putting into circulation in the EEA copies previously put into circulation outside the EEA.
4. References in this Part to the issue of copies of a recording of a performance include the issue of the original recording of the live performance.
5. The right of a performer under this section to authorise or prohibit the issue of copies to the public is referred to in this Chapter as "distribution right".

4.3. Right of Rental (and lending)

Consent required for rental or lending of copies to public

182C

1. A performer's rights are infringed by a person who, without his consent, rents or lends to the public copies of a recording of the whole or any substantial part of a qualifying performance.
2. In this Chapter, subject to the following provisions of this section--
 - a. "rental" means making a copy of a recording available for use, on terms that it will or may be returned, for direct or indirect economic or commercial advantage, and
 - b. "lending" means making a copy of a recording available for use, on terms that it will or may be returned, otherwise than for direct or indirect economic or commercial advantage, through an establishment which is accessible to the public.
3. The expressions "rental" and "lending" do not include--
 - a. making available for the purpose of public performance, playing or showing in public or communication to the public;
 - b. making available for the purpose of exhibition in public; or
 - c. making available for on-the-spot reference use.
4. The expression "lending" does not include making available between establishments which are accessible to the public.

5. Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.
6. References in this Chapter to the rental or lending of copies of a recording of a performance include the rental or lending of the original recording of the live performance.
7. In this Chapter--
 "rental right" means the right of a performer under this section to authorise or prohibit the rental of copies to the public, and
 "lending right" means the right of a performer under this section to authorise or prohibit the lending of copies to the public.

4.4. Right of Making Available to the Public of Fixed Performances

Consent required for making available to the public

Section 182CA

1. A performer's rights are infringed by a person who, without his consent, makes available to the public a recording of the whole or any substantial part of a qualifying 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.
2. The right of a performer under this section to authorise or prohibit the making available to the public of a recording is referred to in this Chapter as "making available right."

4.5. Right of Broadcasting

No such provision.

4.6. Right of Communication to the public

No such provision.

4.7. Right of Public Performance

No such provision.

4.8. Any Other Exclusive Right Concerning Fixed Performances

No other exclusive rights.

5. Rights to Remuneration

5.1. Right to Remuneration for Rental of a Copy of a Film

Right to equitable remuneration where rental right transferred

Section 191G

1. Where a performer has transferred his rental right concerning a sound recording or a film to the producer of the sound recording or film, he retains the right to equitable remuneration for the rental.
The reference above to the transfer of rental right by one person to another includes any arrangement having that effect, whether made by them directly or through intermediaries.
2. The right to equitable remuneration under this section may not be assigned by the performer except to a collecting society for the purpose of enabling it to enforce the right on his behalf.
The right is, however, transmissible 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.
3. Equitable remuneration under this section is payable by the person for the time being entitled to the rental right, that is, the person to whom the right was transferred or any successor in title of his.
4. The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable, subject to section 191H (reference of amount to Copyright Tribunal).
5. An agreement is of no effect in so far as it purports to exclude or restrict the right to equitable remuneration under this section.
6. In this section a "collecting society" means a society or other organisation which has as its main object, or one of its main objects, the exercise of the right to equitable remuneration on behalf of more than one performer.

5.2. Right to Remuneration for Broadcasting or Communication to the Public of a Film

No such provision.

5.3. Any Other Right to Remuneration

Reception and re-transmission of wireless broadcast by cable

Schedule 2: Rights in Performances: Permitted Acts (applied by a reference in Section 189)

Section 19

1. This paragraph applies where a wireless broadcast made from a place in the United Kingdom is received and immediately re-transmitted by cable.

2. The rights conferred by this Chapter in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which it is re-transmitted by cable; but where the making of the broadcast was an infringement of those rights, the fact that the broadcast was re-transmitted by cable shall be taken into account in assessing the damages for that infringement.
3. Where--
 - a. the re-transmission by cable is in pursuance of a relevant requirement, but
 - b. to any extent, the area in which the re-transmission by cable takes place ("the cable area") falls outside the area for reception in which the broadcast is made ("the broadcast area"),
 the re-transmission by cable (to the extent that it is provided for so much of the cable area as falls outside the broadcast area) of any performance or recording included in the broadcast shall, subject to sub-paragraph (4), be treated as licensed by the owner of the rights conferred by this Chapter in relation to the performance or recording, subject only to the payment to him by the person making the broadcast of such reasonable royalty or other payment in respect of the re-transmission by cable of the broadcast as may be agreed or determined in default of agreement by the Copyright Tribunal.
4. Sub-paragraph (3) does not apply if, or to the extent that, the re-transmission of the performance or recording by cable is (apart from that sub-paragraph) licensed by the owner of the rights conferred by this Chapter in relation to the performance or recording.
5. The Secretary of State may by order--
 - a. provide that in specified cases sub-paragraph (2) is to apply in relation to broadcasts of a specified description which are not made as mentioned in that sub-paragraph, or
 - b. exclude the application of that sub-paragraph in relation to broadcasts of a specified description made as mentioned in that sub-paragraph.
6. Where the Secretary of State exercises the power conferred by sub-paragraph (5)(b) in relation to broadcasts of any description, the order may also provide for sub-paragraph (3) to apply, subject to such modifications as may be specified in the order, in relation to broadcasts of that description.
7. An order under this paragraph may contain such transitional provision as appears to the Secretary of State to be appropriate.
8. An order under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

6. Presumptions

6.1. The Transfer of the Right to Film a Performance (shall comprise the right to distribute the recorded performance to the public by renting)

Presumption of transfer of rental right in case of film production agreement

191F

1. Where an agreement concerning film production is concluded between a performer and a film producer, the performer shall be presumed, unless the agreement provides to the contrary, to have transferred to the film producer any rental right in relation to the film arising from the inclusion of a recording of his performance in the film.
2. Where the section applies, the absence of signature by or on behalf of the performer does not exclude the operation of section 191C (effect of purported assignment of future rights).
3. The reference in subsection (1) to an agreement concluded between a performer and a film producer includes any agreement having effect between those persons, whether made by them directly or through intermediaries.
4. Section 191G (right to equitable remuneration on transfer of rental right) applies where there is a presumed transfer by virtue of this section as in the case of an actual transfer.

6.2. Any Other Presumption

No other presumptions.

7. Transfer of Rights

Assignment and licences

Section 191B

1. A performer's property rights are transmissible by assignment, by testamentary disposition or by operation of law, as personal or moveable property
2. An assignment or other transmission of a performer's property rights may be partial, that is, limited so as to apply--
 - a. to one or more, but not all, of the things requiring the consent of the rights owner;
 - b. to part, but not the whole, of the period for which the rights are to subsist.
3. An assignment of a performer's property rights is not effective unless it is in writing signed by or on behalf of the assignor.
4. A licence granted by the owner of a performer's property rights is binding on every successor in title to his interest in the rights, except a purchaser in good

faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Chapter to doing anything with, or without, the licence of the rights owner shall be construed accordingly.

Prospective ownership of a performer's property rights

Section 191C

1. This section applies where by an agreement made in relation to a future recording of a performance, and signed by or on behalf of the performer, the performer purports to assign his performer's property rights (wholly or partially) to another person.
2. If on the rights coming into existence the assignee or another person claiming under him would be entitled as against all other persons to require the rights to be vested in him, they shall vest in the assignee or his successor in title by virtue of this subsection.
3. A licence granted by a prospective owner of a performer's property rights is binding on every successor in title to his interest (or prospective interest) in the rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser.
References in this Chapter to doing anything with, or without, the licence of the rights owner shall be construed accordingly.
4. In subsection (3) "prospective owner" in relation to a performer's property rights means a person who is prospectively entitled to those rights by virtue of such an agreement as is mentioned in subsection (1).

Performer's property right to pass under will with unpublished original recording

Section 191E

Where under a bequest (whether general or specific) a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance 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 any performer's rights in relation to the recording to which the testator was entitled immediately before his death.

Performers' non-property rights

Section 192A

1. the rights conferred on a performer by--

section 182 (consent required for recording, &c of live performance),

section 183 (infringement of performer's rights by use of recording made without consent),

section 184 (infringement of performer's rights importing, possessing or dealing with illicit recording), section 191HA (assignment of performer's property rights in a sound recording), and section 191HB (payment in consideration of assignment), are not assignable or transmissible, except to the following extent.

They are referred to in this Chapter as "performer's non-property rights".

2. On the death of a person entitled to any such right--
 - a. the right passes to such person as he may by testamentary disposition specifically direct, and
 - b. if or to the extent that there is no such direction, the right is exercisable by his personal representatives.
3. References in this Chapter to the performer, in the context of the person having any such right, shall be construed as references to the person for the time being entitled to exercise those rights.
4. Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.
5. Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

Moral Rights not Assignable

Section 205L

The rights conferred by this Chapter are not assignable.

Transmission of Moral Rights on Death

Section 205M

1. On the death of a person entitled to a right conferred by this Chapter--
 - a. the right passes to such person as he may by testamentary disposition specifically direct,
 - b. if there is no such direction but the performer's property rights in respect of the performance in question form part of his estate, the right passes to the person to whom the property rights pass,
 - c. if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.
2. Where a performer's property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply--
 - a. to one or more, but not all, of the things to which the owner has the right to consent, or

- b. to part, but not the whole, of the period for which the rights subsist, any right which by virtue of subsection (1) passes with the performer's property rights is correspondingly divided.
- 3. Where by virtue of subsection (1)(a) or (1)(b) a right becomes exercisable by more than one person--
 - a. it is, in the case of the right conferred by section 205F (right to object to derogatory treatment of performance), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question, and
 - b. any waiver of the right in accordance with section 205J by one of them does not affect the rights of the others.
- 4. A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).
- 5. Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

8. Additional Information

8.1. Applicability

8.2. Limitations

8.3. Other Possible Specificities



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