

140 YEARS LATER, LOOKING AHEAD
WHOSE RIGHT IS COPYRIGHT?
OWNERSHIP AND TRANSFER OF COPYRIGHT AND RELATED RIGHTS
October 9-11, 2025
Opatija, Croatia

United States Response to 2025 Questionnaire

I. INITIAL OWNERSHIP [SESSION 2]

A. To whom does your country's law vest initial ownership? (Please indicate all that apply.)

1 — The author (human creator) of the work

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

There is no statutory definition of authorship. The Supreme Court has interpreted “authors” to mean “he to whom anything owes its origin.”¹ Works of authorship are the “original intellectual conceptions” of an author.² The author must “independently create[]” the work, and the work must “possess[] at least some minimal degree of creativity.”³ The author need not contribute novel expression and even an author's ‘accidental’ expression can manifest sufficient originality.⁴ Courts have not extended authorship to non-human authors, finding that the

¹ *Burrow-Giles Lithographic Co. v. Sarony*, 111 U.S. 53, 58 (1884) (upholding statute including photography as subject matter of copyright). In *Burrow-Giles*, the Supreme Court disagreed with the defendant's argument that they had not infringed a photographer's copyright because the photographer was not an author because taking a photograph is a purely ‘mechanical’ process. *Id.* at 58-60. In finding that the photographer, Napoleon Sarony, was an author, the Supreme Court noted the lower court's factual findings that the photographed stemmed “entirely from [Sarony's] own original mental conception, to which he gave visible form by posing the said Oscar Wilde in front of the camera, selecting and arranging the costume, draperies, and other various accessories in said photograph, arranging the subject so as to present graceful outlines, arranging and disposing the light and shade, suggesting and evoking the desired expression . . .” *Id.* at 60.

² *Id.* at 58.

³ *Feist Publications, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345, 364 (1991) (holding that telephone directory is not copyrightable because telephone directory is composed of “collection of facts that are selected, coordinated, and arranged in a way that utterly lacks originality.”).

⁴ *Alfred Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99, 105 (2d Cir. 1951) (“A copyist's bad eyesight or defective musculature, or a shock caused by a clap of thunder, may yield sufficiently distinguishable variations” to constitute an original work of authorship). However, authorship is not found when randomness has a non-human origin. *Kelley v. Chicago Park Dist.*, 635 F.3d 290, 304 (7th Cir. 2011) (finding wildflower garden installation lacked author because “gardens are planted and cultivated, not authored . . . [m]ost of what we see and experience in a garden—the colors, shapes, textures, and scents of the plants—originates in nature, not in the mind of the gardener.”)

Copyright Act “is best read as making humanity a necessary condition for authorship.”⁵

b. For joint works (works on which more than one creator has collaborated), does your law define joint authorship? What is the scope of each co-author’s ownership? (may joint authors exploit separately, or only under common accord)?

Joint authorship is defined as a “work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.”⁶ Courts have developed a test for joint authorship when the parties do not have a written agreement regarding coauthorship: “a co-authorship claimant bears the burden of establishing that each of the putative co-authors (1) made independently copyrightable contributions to the work; and (2) fully intended to be co-authors.”⁷ Evidence of mutual intent can include how the purported co-authors are billed, who retains decision-making ability about the work, and how the purported co-authors hold themselves out to third parties in contracts.⁸ A court has also considered “control” of the work to be “the most important factor” in determining joint authorship when there is no contract.⁹ Additionally, joint authorship can be found when there are “objective manifestations of a shared intent

⁵ *Thaler v. Perlmutter*, 130 F.4th 1039, 1046 (D.C. Cir. 2025) (finding work created by artificial intelligence system was not copyrightable due to lack of human authorship); *Naruto v. Slater*, 888 F.3d 418, 420, 426 (9th Cir. 2018) (monkey did not have standing under Copyright Act to sue for copyright infringement because Copyright Act does not provide standing to non-human animals); U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES, § 360 (3d ed. 2021) (“The U.S. Copyright Office will register an original work of authorship, provided that the work was created by a human being.”).

⁶ 17 U.S.C. § 101.

⁷ *Thomson v. Larson*, 147 F.3d 195, 200 (2d Cir. 1998) (citing *Childress v. Taylor*, 945 F.2d 500, 507-08 (2d Cir. 1991)).

⁸ *Id.* at 204 (finding no co-authorship when primary author had exclusive control over changes to the work, was listed as sole author, and represented himself in agreements as sole author, along with other evidence of primary author’s intent and understanding of sole authorship). Applying *Thomson*, the Southern District of New York recently granted a motion to dismiss, holding that President Trump was not a joint author of *The Trump Tapes*, a book and audiobook composed primarily of interviews of Bob Woodward interviewing President Trump. *Trump v. Simon & Schuster, Inc.*, ___ F.Supp.3d ___, No. 23-6883, 2025 WL 2017888 (S.D.N.Y. 2025). SDNY held that President Trump and Woodward never manifested the intent to be joint authors because Woodward has held himself out as a sole author and President Trump did not intend for the interviews to be used for *The Trump Tapes*. *Id.* at *9-10. Furthermore, Woodward and Simon & Schuster exercised decision-making authority over *The Trump Tapes* because Woodward initiated the interviews, drafted the questions, chose additional interviewees, managed the work’s publication, used “discretion” during recording, and edited the recordings into the audiobook. *Id.* at *11. Woodward is also credited as the sole author of *The Trump Tapes* and President Trump is credited only as a “reader” which is not sufficient to give rise to a joint authorship claim. *Id.*

⁹ *Aalmuhammed v. Lee*, 202 F.3d 1227, 1234 (9th Cir. 2000).

to be coauthors” and the work’s “audience appeal” results from both authors’ contributions and “the share of each in its success cannot be appraised.”¹⁰

Joint authors receive “equal undivided interests in the whole work” and may separately exploit their rights (or license them non-exclusively), but they have a duty to account to their co-authors for their co-authors’ respective shares of the proceeds.¹¹ For exclusive grants to be effective, all joint authors must agree to the exclusive grant of rights.¹²

2 — Employers

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

Employers own the copyright in works “prepared by an employee within the scope of his or her employment” and is one of two ways a work of authorship can be a “work made for hire.”¹³ The Supreme Court has directed that the definitions of employee and scope of employment be consistent with the common law of agency.¹⁴ Courts determining whether someone is an employee, analyze the “hiring party’s manner and means by which the product is accomplished,” as well as the “skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects to the hired party; the extent of the hired party’s discretion over when and how long to work; the method of payment; the hired party’s role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.”¹⁵ Though these factors are not exclusive and none are definitive,¹⁶ five of these factors will be “significant in virtually

¹⁰ *Id.* (quoting *Edward B. Marks Music Corp. v. Jerry Vogel Music Co., Inc.*, 140 F.2d 266, 267 (2nd Cir. 1944) (Hand, J.) *modified by* 140 F.2d 268 (1944)).

¹¹ *Larson*, 147 F.3d 195 at 199.

¹² *Brownstein v. Lindsay*, 742 F.3d 55, 68 (3d Cir. 2014) (“Accordingly, the only way for truly exclusive rights to be conveyed to a joint work is for all co-authors to consent to such an exclusive conveyance. “).

¹³ 17 U.S.C. § 101.

¹⁴ *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 740 (1989).

¹⁵ *Id.* at 751-52 (citations removed).

¹⁶ *Id.* at 752.

any situation,” “(1) the hiring party’s right to control the manner and means of creation; (2) the skill required; (3) the provision of employee benefits; (4) the tax treatment of the hired party; and (5) whether the hiring party has the right to assign additional projects to the hired party.”¹⁷

3 — Commissioning parties

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

A commissioning party owns the copyright in the work if it is a “specially ordered or commissioned work” that falls within one of the limitatively delineated statutory categories and the parties execute a signed agreement that the work is a work for hire.¹⁸ The statutory categories are: “contribution to a collective work, as part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas.”¹⁹ The statutory categories are “narrowly drawn.”²⁰

Sound recordings are not included in the statutory categories and can not be works for hire “standing alone.”²¹ Nevertheless, sound recordings could be a work for hire (providing there is also a signed writing in compliance with the statute) if the sound recording falls within another of the statutory categories, such as a compilation or collective work.²² For example, “[a] sound recording that is part of an album may

¹⁷ *Aymes v. Bonelli*, 980 F.2d 857, 861 (2d Cir. 1992).

¹⁸ 17 U.S.C. § 101.

¹⁹ *Id.*

²⁰ *Lulirama Ltd., Inc. v. Axxess Broad. Servs., Inc.*, 128 F.3d 872, 877 (5th Cir. 1997) (holding that jingle alone was not “audiovisual work” within meaning of 17 U.S.C. § 101 because “audiovisual work must have a visual component”).

²¹ *Ballas v. Tedesco*, 41 F. Supp. 2d 531, 541 (D.N.J. 1999) (“[T]he sound recordings are not a work for hire under the second part of the statute because they do not fit within any of the nine enumerated categories, and because there was no signed written agreement between the parties . . . [t]he definition does not provide that a sound recording standing alone qualifies as work for hire under § 101(2).”); *In re Napster, Inc. Copyright Litig.*, 191 F. Supp. 2d 1087, 1097 (N.D. Cal. 2002) (noting that the “glaring omission” of sound recordings from “the statutory requirements suggests that [purported copyright owners’] works cannot be ‘specially commissioned’ works for hire.”).

The music industry may include assignment provisions in recording contracts that transfer the copyright in a sound recording regardless of whether a work for hire agreement is valid. *Teevee Toons, Inc. v. MP3.com, Inc.*, 134 F. Supp. 2d 546, 549 (S.D.N.Y. 2001) (“[Commissioning party’s] ultimate ownership of the underlying copyrights in issue is not in doubt, for the agreements provide that total and complete ownership passes to the [commissioning party], either as works made for hire or, if such status is denied, by assignment.”).

²² MELVILLE B. NIMMER & DAVID NIMMER, 1 NIMMER ON COPYRIGHT § 5.03 (2025); *Waite v. UMG Recordings, Inc.*, No. 19-CV-01091 (LAK), 2023 WL 1069690, at *7 (S.D.N.Y. Jan. 27, 2023), *appeal dismissed* (Mar. 31,

qualify as a contribution to a collective work ‘depend[ing] on the facts of the putting of an album together,’” such as whether record label employees such as sound engineers or producers contributed to the creation of the work.²³ Moreover, because the copyright in a compilation does not extend to the separate components, copyright ownership of an album will not extend to the individual recorded performances of the musical composition.

The Second Circuit has held that “specially ordered or commissioned” is consistent with the “instance and expense” test (that judges developed in interpreting the definition of “work made for hire” under the Copyright Act of 1909) that delineates the circumstances in which a work can be made for hire and the copyright vests in someone other than the author.²⁴ The relevant inquiry under the “instance and expense test” is whether “the ‘motivating factor in producing the work was the employer who induced the creation.’”²⁵ Nevertheless, the commissioning party is not required to “possess or exercise artistic control” to fall within the meaning of “specially ordered or commissioned.”²⁶

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

The parties “must expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.”²⁷ The Second, Seventh and Ninth Circuits hold that the writing must be executed prior to the work’s creation.²⁸

2023) (noting that “[w]hether a sound recording qualifies as a contribution to a collective work or compilation is a fact-intensive question that requires investigating the circumstances in which the sound recording was produced and released. A ‘collective work’ is a ‘work . . . in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole,’ and may include a CD or album consisting of sound recordings. The term ‘compilation’ includes collective works.”) (citations removed).

²³ *Waite*, 2023 WL 1069690, at *7 (noting, without deciding, validity of termination notice relies on whether sound recordings at issue were works made for hire).

²⁴ *Playboy Enters., Inc. v. Dumas*, 53 F.3d 549, 562 (2d Cir. 1995) (“It appears, therefore, that the phrase ‘specially ordered or commissioned’ has essentially the same meaning as ‘instance and expense’”).

²⁵ *Id.* at 554 (quoting *Siegel v. Nat’l Periodical Publ’ns, Inc.*, 508 F.2d 909, 914 (2d Cir. 1974)).

²⁶ *Id.* at 562.

²⁷ 17 U.S.C. § 101.

²⁸ *Est. of Kauffmann v. Rochester Inst. of Tech.*, 932 F.3d 74, 75, 78 (2d Cir. 2019) (holding agreements executed five years after works’ creation not a signed writing in compliance with the statute despite earlier oral work-for-hire agreement between the parties); *Schiller & Schmidt, Inc. v. Nordisco Corp.*, 969 F.2d 410, 412-13 (7th Cir. 1992); *Gladwell Gov’t Servs, Inc. v. County of Marin*, 265 F. App’x 624, 626 (9th Cir. 2008).

4 — The person or entity who takes the initiative of the work’s creation (e.g. Producers; publishers) of certain kinds of works, e.g., audiovisual works; collective works

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

Under either formulation of the work for hire doctrine, the employer or commissioning party owns all rights in the work from the outset.²⁹

When a party directs the creation of a collective work or a compilation, that party holds the copyright only in the compilation itself (such as selection or arrangement), not the copyright in the works that make up the compilation.³⁰ Absent a written agreement allocating rights between the parties, the party directing the creation of the compilation “is presumed to have acquired only the privilege of reproducing and distributing the contribution as part of that particular collective work, any revision of that collective work, and any later collective work in that same series.”³¹

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

Copyright ownership is not vested in parties outside those outlined above.

6 — If your country’s law recognizes copyright in AI-generated works, who is vested with original ownership? (e.g., the person providing the prompts to request an output? The creator of the LLM model and/or training data? someone else?)

The United States does not recognize copyright in AI-generated work, only AI-assisted work. The copyright vests in the person who adds the human authorship to the output. For example, the United States Copyright Office registered a work entitled *A Single Piece of American Cheese* and the basis of the claim was the work’s “[s]election, coordination, and arrangement of material generated by artificial intelligence.”³² The AI-generated elements of “American Cheese” are themselves not copyrightable, but the human contribution of selection, coordination, and arrangement of this AI-generated material is copyrightable. The copyright owner, Invoke AI, detailed its process of making “American Cheese”, in particular the use of ‘inpainting,’ or the “process of selectively modifying or regenerating

²⁹ 17 U.S.C. 201(b) (“the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.”).

³⁰ 17 U.S.C. § 201(c).

³¹ 17 U.S.C. § 201(c).

³² *A Single Piece of American Cheese*, Registration No. VAU001543942, https://publicrecords.copyright.gov/detailed-record/voyager_37990563.

parts of an image while maintaining consistency with the surrounding elements.”³³ The United States Copyright Office has noted that ‘inpainting’ “allow[s] users to exert control over the selection, arrangement, and content of the final output” which, if sufficiently original, would render the output copyrightable.”³⁴

LLMs do not have authorship claims over the works they generate because they are not human.³⁵ The humans who create an LLM are also not authors of the works the LLMs generate.³⁶ Whether a human who both creates an LLM and generates the prompts is an author has not yet been decided. In *Thaler v. Perlmutter*, the D.C. Circuit did not reach the argument of whether human authorship is present when the purported author both creates the LLM and directs the prompts as Thaler waived that argument when, before the Copyright Office, Thaler claimed that the LLM autonomously created the work at issue.³⁷ However, well before *Thaler*, the Copyright Office did not grant a copyright registration in images created by AARON, an artificial intelligence created by Harold Cohen, despite Cohen’s presumed prompting of AARON to create images in a coloring book, *Art and Computers: The First Artificial Intelligence Coloring Book*. The copyright registration covers only the coloring book’s text.³⁸

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

B. Private international law consequences

1 — To what country’s law do your country’s courts (or legislature) look to determine initial ownership: Country of origin? Country with the greatest connections to the work and the author(s)? Country(ies) for which protection is claimed?

³³ *How We Received The First Copyright for a Single Image Created Entirely with AI-Generated Material*, INVOKE, <https://44037860.fs1.hubspotusercontent-na1.net/hubfs/44037860/Invoke-First-Copyright-Image-AI-Generated-Material-Report.pdf>; *Has the Copyright Office become more receptive to AI-generated works? Yes, if they embody selection, coordination, arrangement of human creators*, CHAT GPT IS EATING THE WORLD (Mar. 14, 2025), <https://chatgptiseatingtheworld.com/2025/03/14/has-the-copyright-office-become-more-receptive-to-ai-generated-works-yes-if-they-embody-selection-coordination-arrangement-of-humans/>.

³⁴ U.S. COPYRIGHT OFF., COPYRIGHT AND ARTIFICIAL INTELLIGENCE PART 2: COPYRIGHTABILITY 26-27 (2025), <https://www.copyright.gov/ai/Copyright-and-Artificial-Intelligence-Part-2-Copyrightability-Report.pdf>.

³⁵ *Cf. Thaler v. Perlmutter*, 130 F.4th 1039, 1044 (D.C. Cir. 2025) (holding work not copyrightable as matter of law when generative artificial intelligence model listed as sole author on copyright application).

³⁶ *See id.* at 1042 (Thaler not author of LLM’s generated works despite creating LLM).

³⁷ *Id.* at 1051.

³⁸ *Art and computers: the first artificial intelligence coloring book*, Registration No. TX0001494242, https://publicrecords.copyright.gov/detailed-record/voyager_13837373; Michele Berdinis, *Harold and AARON*, BEELINE LEGAL (Apr. 29, 2024), <https://beelinelegal.wordpress.com/2024/04/29/harold-and-aaron/#d931222b-de9d-4e32-8bbb-57de425d1e6d>.

Initial copyright ownership is “determined by the law of the state with ‘the most significant relationship’ to the property and the parties.”³⁹ However, ownership of a copyright under foreign law is not required to receive copyright protection in the United States.⁴⁰ Courts interpreting the Second Circuit’s 1998 decision in *Itar-Tass Russian News Agency v. Russian Kurier, Inc.* have generally considered the state with the strongest connection to a work to be its country of origin or first publication.⁴¹ Under the Berne Convention for the Protection of Literary and Artistic Works, protection in member states is independent from protection in the country of origin.⁴² While the Berne Convention is not self-executing in the U.S.⁴³, sec. 104 of the US Copyright Act gives effect to this principle.

II. TRANSFERS OF OWNERSHIP [SESSION 3]

A. Inalienability

1 — Moral rights

a. Can these be granted to the grantee of economic rights? To a society for the collective management of authors’ rights?

The United States does not recognize an authors’ moral rights except in the Visual Artists Rights Act (17 U.S.C. § 106A) which limits protection to

³⁹ *Itar-Tass Russian News Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 90 (2d Cir. 1998) (holding Russia’s laws determine copyright ownership when Russia had strongest connection to works at issue because works were created in Russia by Russians).

⁴⁰ *Corinna Warm & Studio Warm LLC v. Innermost Ltd.*, No. CV214402MWF SHKX, 2023 WL 3316995, at *3 (C.D. Cal. Apr. 13, 2023) (discussing *Hasbro v. Sparkle*, 780 F.2d 189 (2d Cir. 1985) and MELVILLE B. NIMMER & DAVID NIMMER, 5 NIMMER ON COPYRIGHT § 17.05 (2022)).

⁴¹ See *Saregama India Ltd. v. Mosley*, 635 F.3d 1284, 1290 (11th Cir. 2011) (citing *Lahiri v. Universal Music & Video Distrib., Inc.*, 513 F.Supp.2d 1172, 1176 n. 4 (C.D. Cal. 2007) and *in accord Itar-Tass*, 153 F.3d at 90) (“Initial ownership of a copyrighted work is determined by the laws in the work’s country of origin”); *Creazioni Artistiche Musicali, S.r.l. v. Carlin Am., Inc.*, No. 14-CV-9270 (RJS), 2016 WL 7507757, at *3 (S.D.N.Y. Dec. 30, 2016) (citing *Itar-Tass*, 153 F.3d at 90) (“As a general matter, the law of the jurisdiction where an artistic work is ‘created’ and ‘first published’ governs issues concerning copyright ownership.”), *aff’d*, 747 F. App’x 3 (2d Cir. 2018); *RCTV Int’l Corp. v. Rosenfeld*, No. 13-23611-CIV, 2016 WL 6818955, at *10 (S.D. Fla. Sept. 30, 2016) (“*Itar-Tass* subsequently held a more universal rule: the laws of a work’s country of origin govern the issue of initial copyright ownership.” (citing *Itar-Tass*, 153 F.3d at 90-91 n.11)).

⁴² Berne Convention art. 5(2) (“The enjoyment and the exercise of these rights shall not be subject to any formality; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed.”).

⁴³ The Berne Convention was implemented in the United States through the Berne Convention Implementation Act of 1988, Pub. L. No. 100-568, 102 Stat. 2853 (1988) (codified as amended in scattered sections of 17 U.S.C.).

Works of Visual Art as defined in 17 U.S.C. 101. These rights cannot be transferred.⁴⁴

b. May the author contractually waive moral rights?

Authors can waive their rights under the Visual Artists Rights Act “if the author expressly agrees to such waiver in a written instrument signed by the author.”⁴⁵ More generally, authors can waive moral rights to the extent they have them (via contract, state law if applicable, or otherwise) as the Copyright Act does not constrain their transfer.

2 — Economic rights

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

Authors can, “by any means of conveyance” transfer “[a]ny of the exclusive rights comprised in a copyright.”⁴⁶ Transfer means “an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in a copyright, whether or not it is limited in time or place of effect, but not including a nonexclusive license.”⁴⁷ Though both an assignment or exclusive license constitute transfers under the Copyright Act, assignments “transfer legal title to the transferee,” while a license does not.⁴⁸

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

The Copyright Act does not limit transfers of particular economic rights. However, because the Copyright Act’s transfer provisions permit transfers of copyright “in whole or in part” of “any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights”⁴⁹ an authors’ transfer of particular rights would appear limited to those delineated rights and not extend to additional rights absent an additional

⁴⁴ 17 U.S.C. § 106A(e)(1) (“The rights conferred by subsection (a) may not be transferred . . .”).

⁴⁵ *Id.*; see U.S. COPYRIGHT OFF., WAIVER OF MORAL RIGHTS IN VISUAL ARTWORKS (1996), <https://www.copyright.gov/reports/waiver-moral-rights-visual-artworks.pdf>

⁴⁶ 17 U.S.C. § 201(d).

⁴⁷ 17 U.S.C. § 101.

⁴⁸ *Minden Pictures, Inc. v. John Wiley & Sons, Inc.*, 795 F.3d 997, 1003 (9th Cir. 2015) (citing, among others, MELVILLE B. NIMMER & DAVID NIMMER, 3 NIMMER ON COPYRIGHT § 10.02[A]).

⁴⁹ 17 U.S.C. § 201.

signed writing.⁵⁰ Nevertheless, courts have wrestled with this question for decades.⁵¹ Historically, courts considered the sophistication of the parties when interpreting the scope of grants of future rights.⁵²

Today, courts have taken distinct approaches in interpreting the scope of transfers in the absence of a clause that expressly grants rights in future technologies.⁵³ The Second Circuit has held that the burden is on the licensor to explicitly reserve rights in new technology even when the contract at issue contained a clause reserving all rights not granted in the contract.⁵⁴ However, the Ninth Circuit found that a licensor that included a similar reservation clause excluded use of the work in technologies not known at the time of the contract.⁵⁵

B. Transfers by operation of law

1 — Presumptions of transfer:

United States copyright law does not have presumptions of transfer *per se*. However, courts may interpret parties' conduct to conclude a nonexclusive

⁵⁰ JANE C. GINSBURG & ROBERT A. GORMAN, COPYRIGHT LAW 72 (1st ed. 2012).

⁵¹ *Boosey & Hawkes Music Publishers, Ltd. v. Walt Disney Co.*, 145 F.3d 481, 486-88 (2d Cir. 1998) (“Disputes about whether licensees may exploit licensed works through new marketing channels made possible by technologies developed after the licensing contract—often called ‘new-use’ problems—have vexed courts since at least the advent of the motion picture.” (citing MELVILLE B. NIMMER & DAVID NIMMER, 3 NIMMER ON COPYRIGHT, § 10.10[A] at 10–86)).

⁵² *Compare Ettore v. Philco Television Broad. Corp.*, 229 F.2d 481, 491 & n.14 (3d Cir. 1956) (holding boxer’s grant of motion picture rights in fight did not encompass use of footage in television series), *cert. denied*, 351 U.S. 926 (1956) with *Bartsch v. Metro-Goldwyn-Mayer, Inc.*, 391 F.2d 150, 154-55 (2d Cir. 1968) (construing businessman’s grant of motion picture rights to include telecasting and distinguishing *Ettore* on basis of sophistication of grantor), *cert. denied*, 393 U.S. 826 (1968).

⁵³ *See, e.g., Reinhardt v. Wal-Mart Stores, Inc.*, 547 F. Supp. 2d 346, 354 (S.D.N.Y. 2008) (interpreting license with language authorizing exploitation of phonograph records in “all forms of reproduction . . . now or hereafter known” to cover new technology of digital downloads).

⁵⁴ *Boosey & Hawkes Music Publishers, Ltd. v. Walt Disney Co.*, 145 F.3d 481, 487 (2d Cir. 1998) (“Thus, we conclude that the burden fell on [the licensor], if he wished to exclude new markets arising from subsequently developed motion picture technology, to insert such language of limitation in the license . . .”).

⁵⁵ *Cohen v. Paramount Pictures Corp.*, 845 F.2d 851, 854 (9th Cir. 1988), *as amended* (July 22, 1988) (finding that “the words ‘exhibition by means of television’ in the license cannot be construed as including the distribution of videocassettes for home viewing is that VCRs for home use were not invented or known in 1969, when the license was executed.”). The Ninth Circuit more recently found that a license for motion picture and television rights was ambiguous about home video rights when home video was not invented at the time the contract was drafted. *Welles v. Turner Ent. Co.*, 503 F.3d 728, 736 (9th Cir. 2007).

license has been granted.⁵⁶ For example, the Ninth Circuit held a transfer occurred despite the lack of written agreement when an effects creator effectively granted a movie director a non-exclusive license to use the effects when the effects creator “created a work at [the director]’s request and handed it over, intending that [the movie director] copy and distribute it.”⁵⁷

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

N/A

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

N/A

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

N/A

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

N/A

2 — Other transfers by operation of law?

Copyrights “may be transferred in whole or in part . . . by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.”⁵⁸ However, “[w]hen an individual author’s ownership of a copyright, or of any of the exclusive rights under a copyright, has not previously been transferred voluntarily by that individual author, no action by any governmental body or other official or organization purporting to seize, expropriate, transfer, or exercise rights of ownership with respect to the copyright, or any of the exclusive rights under a copyright shall be given effect under this title, except as provided under Title 11 [the Bankruptcy Code].”⁵⁹ In addition to transfers

⁵⁶ See, e.g., MELVILLE B. NIMMER & DAVID NIMMER, 3 NIMMER ON COPYRIGHT § 10.03 (2025) (“[N]onexclusive licenses may . . . even be implied from conduct. When the totality of the parties’ conduct indicates an intent to grant such permission, the result is a nonexclusive license” (citations removed)).

⁵⁷ *Effects Assocs., Inc. v. Cohen*, 908 F.2d 555, 559 (9th Cir. 1990) (payment dispute did not constitute copyright infringement but instead should be interpreted under state law for breach of contract when effects creator had effectively granted movie director non-exclusive license to use effects by both creating footage for and sending footage to director).

⁵⁸ 17 U.S.C. § 201(a).

⁵⁹ 17 U.S.C. § 201(d).

by operation of law in bankruptcy proceedings and intestacy, courts have permitted transfers by operation of law through interpretation of state community property laws in divorce⁶⁰ and corporate dissolution.⁶¹

C. Transfers by contractual agreement

1 — Prerequisites imposed by copyright law to the validity of the transfer, e.g., writing, signed, witnessed, recordation of transfer of title?

Copyright transfers are “not valid unless an instrument of conveyance, or a note or memorandum of the transfer, is in writing and signed by the owner of the rights conveyed or such owner’s duly authorized agent.”⁶² Transfers “may be recorded in the Copyright Office”(contingent on compliance with the recordation requirements in 17 U.S.C. § 205) but recordation is not required to effectuate the transfer.⁶³ In the event of a conflict regarding ownership, a bona fide purchaser for value who records first is deemed the owner.⁶⁴

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

The Copyright Act does not require the signed writing to specify the rights and scope of the transfer. However, for a recordation with the Copyright Office to serve as constructive notice of the facts, the “document, or material attached to it, specifically identifies the work to which it pertains so that, after the document is indexed by the Register of Copyrights, it would be revealed by a reasonable search under the title or registration number of the work” and the work has been registered.⁶⁵

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

⁶⁰ *In re Marriage of Susan M. & Frederick L. Worth*, 241 Cal. Rptr. 135 (Cal. Ct. App. 1st. Dist. 1987); *Rodrigue v. Rodrigue*, 218 F.3d 432 (5th Cir. 2000).

⁶¹ *Gomba Music, Inc. v. Avant*, 62 F. Supp. 3d 632, 640 (E.D. Mich. 2014); *Design Basics, L.L.C. v. DeShano Cos., Inc.*, No. 10-14419, 2012 WL 4321313, at *1 (E.D. Mich. Sept. 21, 2012); *Taylor Corp. v. Four Seasons Greetings, LLC*, 403 F.3d 958, 963–964 (8th Cir. 2005).

⁶² 17 U.S.C. § 204(a).

⁶³ 17 U.S.C. § 205(a).

⁶⁴ 17 U.S.C. § 205(d).

⁶⁵ 17 U.S.C. § 205(c)(1).

United States copyright law permits authors or copyright owners to transfer all their economic rights via a signed writing.⁶⁶

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

United States copyright law permits the assignment of all rights in at least some future works. For example, employee-authors effectively grant all rights in their future works created pursuant to employment under 17 U.S.C. § 101, described *supra* in I.A.2(a). Additionally, courts have held contract provisions assigning future rights in future works valid.⁶⁷

It is not clear whether US copyright law permits the assignment of all rights in *all* future works.

D. Private international law

1 — Which law does your country apply to determine the alienability of moral or economic rights and other conditions (e.g. the country of the work’s origin? The country with the greatest connections to the work and the author(s)? The country(ies) for which protection is claimed?)

United States courts would likely apply the law of the country for which rights are granted. The Second Circuit applied United States law to determine that a Brazilian contract was silent about the conveyance of renewal rights (provided for by US law) and thus the author of the work at issue retained these US rights and could assign them, notwithstanding the Brazilian contract’s attempted assignment of all worldwide rights.⁶⁸ In applying US law, not Brazilian law, the Second Circuit found that United States law was applicable because

⁶⁶ See, e.g., *Batiste v. Island Recs. Inc.*, 179 F.3d 217, 223 (5th Cir. 1999) (analyzing scope of contract when author had granted assignee “the entire musical composition, including the exclusive right to secure copyright, ‘all rights of whatsoever nature’ relating to the copyright, and the right to license, ‘in any or all fields of use, by any method now or hereafter known, throughout the world, records embodying the performances.’”).

⁶⁷ See, e.g., *Contractual Obligation Prods., LLC v. AMC Networks, Inc.*, 546 F. Supp. 2d 120, 127 (S.D.N.Y. 2008) (“[A]ssignments of copyrights for work yet to be created are commonplace in the entertainment industry and have repeatedly been held enforceable in federal courts.”); *Nat’l Ass’n For Stock Car Auto Racing, Inc. v. Scharle*, 356 F. Supp. 2d 515, 523 (E.D. Pa. 2005) (holding valid agreement to sell copyright in future works), *aff’d on other grounds*, 184 F. App’x 270 (3d Cir. 2006); *Mellencamp v. Riva Music Ltd.*, 698 F. Supp. 1154, 1155 (S.D.N.Y. 1988) (assignment granted copyright in future works not yet written at time of assignment).

Additionally, the analysis of termination rights of gap grants (grants entered into before the 1976 Copyright Act took effect on January 1, 1978 for works created after that date) presumes that all rights in future works can be assigned. U.S. COPYRIGHT OFF., ANALYSIS OF GAP GRANTS UNDER THE TERMINATION PROVISIONS OF TITLE 17 (2010), <https://www.copyright.gov/reports/gap-grant-analysis.pdf>.

⁶⁸ *Corcovado Music Corp. v. Hollis Music, Inc.*, 981 F.2d 679, 684 (2d Cir. 1993); Richard Arnold & Jane C. Ginsburg, *Foreign Contracts and U.S. Copyright Termination Rights: What Law Applies*, 43 COLUM. J. L. & ARTS 437 (2020).

“United States renewal copyrights reflect a vital policy of United States copyright law; the forum in which the [contracts at issue] are to be construed is in the United States . . . and the place of performance of the contracts is also the United States.”⁶⁹

III. CORRECTIVE MEASURES, SUBSEQUENT TO TRANSFERS OF RIGHTS, ACCORDED TO AUTHORS OR PERFORMERS IN VIEW OF THEIR STATUS AS WEAKER PARTIES [SESSION 4]

1 — Does your law guarantee remuneration to authors and performers?

United States Copyright law does not guarantee remuneration to authors.

a. By requiring payment of proportional remuneration in certain cases (which)?

N/A

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

N/A

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

N/A

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

N/A

2 — Does your law require that the grantee exploit the work?

United States copyright law does not require that a grantee exploit the work. However, contract remedies have emerged. Publishing contracts often include ‘out of print’ clauses that return the copyright to the author, at the author’s request, when the publisher ceases to exploit work.⁷⁰

a. Does your law impose an obligation of ongoing exploitation? For each mode of exploitation granted?

No.

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

N/A

⁶⁹ *Id.* at 685.

⁷⁰ *Out of Print Clauses*, KERNOCHAN CTR. FOR LAW, MEDIA AND THE ARTS: KEEP YOUR COPYRIGHTS, <https://kernochan.law.columbia.edu/content/out-print-clauses>.

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

United States copyright law does not require grantees to account to authors except when a joint author has transferred her interest in a joint work, or where the contract of transfer provides for accountings.⁷¹ In the former case, the transferee “has an absolute duty to account to all of the joint owners.”⁷² In some industries, such as publishing, accounting clauses and/or audit clauses can be negotiated into contracts.⁷³ Additionally, the Writers Guild of America, Directors Guild of America, and the Screen Actors Guild-AFTRA all mandate some form of continued viewership or revenue reporting from companies, distributors, and producers.⁷⁴ However, this information is transmitted directly to the guilds and, in certain cases, artists are prevented from accessing these documents in full.⁷⁵

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

The duty to account when a transferee has taken the place of a joint author is described *supra*, in Section I.A.1(b).

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

Remedies available to an author would depend on the terms of the contract giving rise to the transparency obligation, such as an accounting at publisher’s expense if the author believes there is a disparity. Transferees in the place of a joint author would pursue the same remedy as a joint author, namely filing suit.

⁷¹ The mechanical licensing collective, not authors, have a statutory right to “conduct an audit of a digital music provider operating under the blanket license to verify the accuracy of royalty payments by the digital music provider to the mechanical licensing collective.” 17 U.S.C. § 115(d)(4)(D)(i). Copyright owners have a statutory right to audit the mechanical licensing collective “to verify the accuracy of royalty payments . . .” 17 U.S.C. § 115(d)(3)(L). More detail on the mechanical licensing collective and the blanket license it administers can be found *infra* in IV.

⁷² MELVILLE B. NIMMER & DAVID NIMMER, 1 NIMMER ON COPYRIGHT § 6.12(c)(1) (2025).

⁷³ *Publishers’ Payment and Accounting Practices Need to Keep Up with the Times*, THE AUTHORS GUILD: NEWS, <https://authorsguild.org/news/publishers-payment-and-accounting-practices-need-to-keep-up-with-the-times/>.

⁷⁴ MEMORANDUM OF AGREEMENT FOR THE 2023 WGA THEATRICAL AND TELEVISION BASIC AGREEMENT §23 AT 60-61 (2023); DIRECTORS GUILD OF AMERICA, INC. BASIC AGREEMENT OF 2020, ART. VIII, §18-106(A) at 324; 2014 SAG-AFTRA BASIC AGREEMENT §5(G) AT 13-14 (2014).

⁷⁵ MEMORANDUM OF AGREEMENT FOR THE 2023 WGA THEATRICAL AND TELEVISION BASIC AGREEMENT, *supra* note 73, §23 at 60-61. More generally, artists do not have access or clear guidance on how their revenue-based payments are calculated. Even though residual audits—another source of transparency—are practiced by all three guilds, artists are given details on a purely discretionary basis. WRITERS GUILD OF AMERICA 2020 THEATRICAL AND TELEVISION BASIC AGREEMENT §52(A)-(B) at 319-21; DIRECTORS GUILD OF AMERICA, INC. BASIC AGREEMENT OF 2020, art. XX, §20-904 at 371-72; 2014 SAG-AFTRA BASIC AGREEMENT, *supra* note 73, §6.1 at 50-52.

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

a. Under what circumstances?

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

Authors (or their heirs) may terminate transfers of copyright “at any time during a period of five years beginning at the end of thirty-five years from the date of execution of the grant; or, if the grant covers the right of publication of the work, the period begins at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever term ends earlier.”⁷⁶ Authors and performers whose works come within a work for hire agreement do not have a termination right.

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

Generally, no, unless the grantee’s failure to fulfill certain obligations is a material breach of contract.⁷⁷ “Although licensing agreements are not terminable at will, under federal and state law a material breach of a licensing agreement gives rise to a right of rescission which allows the nonbreaching party to terminate the agreement.”⁷⁸ Breaches “justify rescission of a licensing agreement only when it is ‘of so material and substantial a nature that [it] affect[s] the very essence of the contract and serve[s] to defeat the object of the parties . . . [The breach must constitute] a total failure in the performance of the contract.’”⁷⁹

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

No.

⁷⁶ 17 U.S.C. § 203(a)(3).

⁷⁷ *Friends & Lovers, Inc. v. Lions Gate Films, Inc.*, 56 F. App’x 760, 760 (9th Cir. 2001) (“Absent an express reversion clause in the authorizing instrument, if a grantee under an assignment or exclusive license breaches a covenant of the authorizing instrument, such breach ‘will give rise to a reversion of rights to the grantor only if such breach is so material as to create a right of rescission in the grantor.’” (quoting MELVILLE B. NIMMER & DAVID NIMMER, 3 NIMMER ON COPYRIGHT, § 10.15[A] (2000))).”

⁷⁸ *Rano v. Sipa Press, Inc.*, 987 F.2d 580, 586 (9th Cir. 1993), *as amended* (Mar. 24, 1993) (citing *Costello Publ’g Co. v. Rotelle*, 670 F.2d 1035, 1045 (D.C. Cir. 1981)) (finding no material breach when “parties enjoyed a harmonious eight-year relationship (in which [author] received royalties and credit for his work)”).

⁷⁹ *Id.* (first quoting *Affiliated Hosp. Prod. Inc. v. Merdel Game Mfg. Co.*, 513 F.2d 1183, 1186 (2d Cir. 1975), then quoting *Nolan v. Williamson Music, Inc.*, 300 F.Supp. 1311, 1317 (S.D.N.Y.1969), *aff’d sub. nom. Nolan v. Sam Fox Publ’g Co.*, 499 F.2d 1394 (2d Cir. 1974)).

IV - STREAMING, TRANSFER OR RIGHTS, AND THE MANAGEMENT OF LARGE CATALOGUES [SESSION 5]

1 — Applicable statutory right

a. What specific statutory right applies to licensing the streaming of works and performances?

We interpret this question to refer to music streaming only, not audiovisual streaming. As such, 17 U.S.C. § 106(4) grants copyright owners the exclusive right to “perform the copyrighted work publicly” and 17 U.S.C. § 106(6) grants copyright owners of sound recordings the exclusive right to “perform the copyrighted work publicly by means of a digital audio transmission.”

i. Is it the right of communication to the public modelled after Article 8 of the WCT for authors, and the right of making available modelled after Articles 10 and 14 of the WPPT for performers and phonogram producers?

United States copyright law does not have rights explicitly entitled the “right of communication” or “right of making available.”

ii. Another right or a combination of rights?

United States copyright law does include a right akin to the “right of making available” through the right of distribution under 17 U.S.C. § 106(3) for downloads, and through the right of public performance and public display under 17 U.S.C. § 106(4)-(6) for internet streaming and images available online.⁸⁰ Additionally, the right of reproduction under 17 U.S.C. § 106(1) may be invoked if streaming or sharing a work online makes a copy of the work.⁸¹

However, courts have interpreted the scope of this American take on the “right of making available” inconsistently. Some courts have held that the offer to distribute or stream is in

⁸⁰ U.S. COPYRIGHT OFF., THE MAKING AVAILABLE RIGHT IN THE UNITED STATES 4 (2016) https://www.copyright.gov/docs/making_available/making-available-right.pdf.

⁸¹ *Id.*

violation of 17 U.S.C. §§ 106(3) or 106(4)⁸², while others have held that actual distribution is required to implicate those rights.⁸³

b. For authors, does this right cover both musical and audiovisual works? For performers, does this right cover both performances fixed in phonograms and audiovisual fixations?

For authors, if they own the copyright, the right covers both musical and audiovisual works. For performers, the right covers performances fixed in phonograms and audiovisual works only to the extent the performer owns the rights under copyright.

2 – Transfer of rights

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

The statute is silent on this issue. Judicial interpretation of the scope of transfers is described *supra*, in II.A.2.b.

b. If there are such regulations, when the statutory right referred to in section 1 was introduced into your law, was it considered a new form of use to which the limitation in subsection 2a. above applies?

N/A

c. Are there any cases in your country's law when the statutory right referred to in section 1 is presumed to have been transferred to the producer of a phonogram or audiovisual fixation?

N/A

3 — Remuneration

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

17 U.S.C. § 114(g) specifies remuneration to sound recording performers for non-interactive streaming. 17 U.S.C. § 115 specifies the rate setting procedure for royalties from musical compositions distributed by digital audio transmission, such as in interactive

⁸² See, e.g., *Hotaling v. Church of Jesus Christ of Latter-Day Saints*, 118 F.3d 199, 203 (4th Cir. 1997) (“When a public library adds a work to its collection, lists the work in its index or catalog system, and makes the work available to the borrowing or browsing public, it has completed all the steps necessary for distribution to the public.”).

⁸³ See, e.g., *Atl. Recording Corp. v. Brennan*, 534 F. Supp. 2d 278, 282 (D. Conn. 2008) (“without actual distribution of copies . . . there is no violation [of] the distribution right.”).

streaming, which are ultimately distributed to the copyright owner of the non dramatic musical work (which may be distinct from the author of the non dramatic musical work).

b. Do authors and/or performers retain a residual right to remuneration for streaming even after licensing or transferring the statutory right referred to in section 1?

We are not aware of any court decisions ruling on the validity of transfers of the statutory right to remuneration for streaming.⁸⁴

Under 17 U.S.C. § 114(g)(5), copyright owners and/or recording artists can issue a “letter of direction,” “to distribute, to a producer, mixer, or sound engineer who was part of the creative process that created a sound recording, a portion of the payments to which the payee would otherwise be entitled from the licensing of transmission of the sound recording.” Should the recipient accept the letter of direction, they “shall . . . be treated for all purposes as the owner of the right to receive such payment”⁸⁵ 17 U.S.C. § 114(g)(5) codifies a SoundExchange practice from 2004 that was developed to pay producers, mixers, and sound engineers not entitled to receive royalties under the statute.⁸⁶ At the time the practice was codified, SoundExchange had approximately 2,000 letters of direction from featured performers directing royalty payments.⁸⁷

4 — Collective management

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

Voluntary collective management is available for musical compositions through performing rights organizations such as American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. Mandatory collective management is provided for digital performance of sound recordings by Sound Exchange.

⁸⁴ A court has cast doubt on the validity of transferring the performer’s share but did not rule on the question. *Ithier v. Aponte-Cruz*, 105 F.4th 1, 13 n. 5 (1st Cir. 2024) (dismissing band owner’s alternative arguments for entitlement to statutory royalties belonging to performer and noting that “even assuming that a contract between [performer] and [band owner] and [band owning entity] that renounced the statutory royalties at issue here would be valid” no such contract existed).

⁸⁵ 17 U.S.C. § 114(g)(5).

⁸⁶ DANA A. SCHERER, CONG. RSCH. SERV., MONEY FOR SOMETHING: MUSIC LICENSING IN THE 21ST CENTURY 26 (2021), <https://www.congress.gov/crs-product/R43984>.

⁸⁷ STAFF OF S. AND H. COMM. ON THE JUDICIARY, 115TH CONG., REP. ON H.R. 1551, THE MUSIC MODERNIZATION ACT 16 (Comm. Print 2018), https://www.copyright.gov/legislation/mma_conference_report.pdf.

A blanket mechanical (compulsory) license for musical compositions distributed by digital audio transmission is provided by the Mechanical Licensing Collective.

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

Assuming performers cannot contract out of statutory remuneration (outside of letters of direction), the compulsory management schemes described above remain in effect.

5 — Transparency and the management of large catalogues

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

Under 17 U.S.C. § 112(e)(4) and 114(f)(3)(A), Copyright Royalty Judges “shall also establish requirements by which copyright owners [though the owner may be distinct from the author or performer] may receive reasonable notice of the use of their sound recordings” Under 37 C.F.R. § 370.2, these requirements include delivering to copyright owners a Notice of Use of Sound Recordings Under Statutory License that includes information about the streaming service and the date of the initial digital transmission before the first digital transmission and updating the Notice within 45 days of any change to the information contained in the Notice.

Under 37 C.F.R. § 370.3, preexisting subscription services must deliver a Report of Use to Sound Exchange (or make available to the copyright owner if Sound Exchange or a replacement collective is no longer operational) that includes “a preexisting subscription service’s ‘Intended Playlists’ for each channel and each day of the reported month. The “Intended Playlists” shall include a consecutive listing of every recording scheduled to be transmitted”. These reports “shall be delivered on or before the forty-fifth day after the close of each month.”⁸⁸

Under 37 C.F.R. § 370.4, “nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services” must deliver a Report of Use, including the “actual total performances of the sound recording” to Sound Exchange “for each calendar month of the year by all services other than a nonsubscription service qualifying as an eligible minimum fee webcaster; or (ii) For a two-week period (two periods of 7 consecutive days) for each calendar quarter of the year by a nonsubscription service qualifying as an eligible minimum fee webcaster and the two-

⁸⁸ 37 C.F.R. § 370.3(b).

week period need not consist of consecutive weeks, but both weeks must be completely within the calendar quarter.”

Under 37 C.F.R. § 370.5, “[Sound Exchange] shall make copies of the Reports of Use for the preceding three years available for inspection by any sound recording copyright owner, without charge, during normal office hours upon reasonable notice.”

Under 17 U.S.C. § 115(d)(4)(A) and in compliance with 17 U.S.C. § 115(c)(2)(I),⁸⁹ “digital music provider[s] shall provide usage data for musical works used under the blanket license” to the mechanical licensing collective on a monthly basis due 45 calendar days after the monthly reporting period. This monthly report shall “provide the number of digital phonorecord deliveries of the sound recording, including limited downloads and interactive streams.”⁹⁰ Under 17 U.S.C. § 115(d)(4)(A) and 37 C.F.R. § 210.27, digital music providers shall also provide an annual report to the mechanical licensing collective, which shall include “[t]he total number of payable units, including, as applicable, permanent downloads, plays, and constructive plays, for each sound recording used.”

In turn, under 37 C.F.R. § 210.29, the mechanical licensing collective shall provide monthly and annual reports to the copyright owner (which may be a different party than the author or performer) detailing “the name of the blanket licensee,” “[t]he use type (download, limited download, or stream),” “[t]he number of payable units, including, as applicable, permanent downloads, plays, and constructive plays,” and “[a] detailed and step-by-step accounting of the calculation of royalties . . . sufficient to allow the copyright owner to assess the manner in which the royalty owed was determined and the accuracy of the royalty calculations, which shall include details on each of the components used in the calculation of the payable royalty pool.”

b. Are you aware of any case law where the complex chains of copyright titles, typical of large streaming catalogues, have made the management of works or performances non-transparent or otherwise challenging, such as, for example, the case of *Eight Mile Style, LLC v. Spotify U.S. Inc.* (<https://casetext.com/case/eight-mile-style-llc-v-spotify-us-inc-1>)?

⁸⁹ 17 U.S.C. § 115(c)(2)(I) requires monthly royalty payments and “detailed cumulative annual statements of account, certified by a certified public accountant” to be filed for every use of the compulsory license to make and distribute phonorecords of nondramatic musical works and authorizes the Register of Copyrights to promulgate regulations that regarding “both the monthly and annual statements account” that “prescribe the form, content, and manner of certification with respect to the number of records distributed.”

⁹⁰ 17 U.S.C. § 115(c)(2)(I); 37 C.F.R. § 210.27.

We are not aware of any additional cases. We suspect challenges associated with managing works in large streaming catalogues may have been addressed by the Music Modernization Act of 2018 which provides, as of January 1, 2021, a blanket license for musical works distributed by digital audio transmission (i.e. interactively streamed).

However, Eight Mile Style recently sued Meta for copyright infringement of musical compositions in its catalogue under a theory that Meta did not obtain licenses to provide Meta users the ability to sync the musical compositions with their content.⁹¹ The complaint appears to implicate similar issues as *Eight Mile Style, LLC, v. Spotify U.S. Inc.*⁹²

⁹¹ Complaint, *Eight Mile Style, LLC v. Meta Platforms, Inc.*, Docket No. 2:25-cv-11618 (E.D. Mich. May 30, 2025).

⁹² *Id.* at 3 (describing Meta’s purported attempts to license the Eight Mile Style works from a different licensing entity, Audium, despite Audium’s lack of authority to do so).