

Transfer and Licensing of Copyrights and Related Rights in Europe – Overview on Cross-national Similarities and Disparities

Machine Readable Rights and the News Industry

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- **What can be transferred / types of licences?**

- All Member States permit the transfer of rights of exploitation / use, granting of licences for use of author's or performer's work by others
- Licenses may be exclusive (everybody else excluded from use, even the person granting the license) or non-exclusive (use in competition with others)
- Most countries allow termination of contract, if exploiter does not exploit the transferred rights in a certain time

• Interpretation of contracts

- Most courts interpret transfer contracts restrictively due to
 - express provisions in legislation or
 - general principles of interpretation in civil law
- Some states rule that only those rights are transferred and only to the extent, which is explicitly laid down in the respective contract
- ‘*purpose-of-transfer-doctrine*’: in case of doubt, only those rights are transferred, which are necessary to meet the purpose of the contract (Germany, Spain, Portugal)
- *In dubio pro auctore*: when in doubt, a contract must be interpreted in favor of the author/performer/creator → what is not mentioned, is not transferred

Important differences / disparities **OLSWANG**

•Assignment, Transfer of ownership

- Most states allow the assignment of copyright (‘cession’) = the complete transfer of the right itself. Comparable to a sale; assignee receives an absolute right.
- Exception: Germany and Austria do not permit the transfer of ownership, except by testamentary disposition; only licensing for (economic) exploitation of rights allowed (‘concession’). Exploiters can only gain privileges to use the work, while certain rights are inalienable and always remain with the author/creator.

•Requirements of form

- Almost all Member States require a written contract for the transfer of copyright and related rights; Germany e.g. only for certain types of contracts.
- Exception: Nordic countries and Austria do not expressly require a written form.

Important differences / disparities **OLSWANG**

• Scope of transfer

➤ **Future forms of exploitation**

- Some states explicitly prohibit the transfer of rights of exploitation unknown at the time of the contract (e.g. Italy, Spain, Greece).
- Others allow the transfer under certain conditions (e.g. France, Luxembourg, Germany).

➤ **Transfer of future works**

- Allowed by some (under varying conditions, e.g. under time limit or unconditionally)
- Prohibited by some
- Not expressly mentioned by others.

• **In general: numerous small variations and differences on important topics or smaller details in national legislation of the different countries.**



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