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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Similarities

• 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
Similarities

• 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

• 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

• 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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