

ECP-2007-DILI-517006

EFG – The European Film Gateway

Report on legal frameworks in European Film Gateway (EFG) consortium member states

Deliverable number	D 5.1
Dissemination level	<i>Public</i>
Delivery date	<i>8 April 2009</i>
Status	<i>Final</i>
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This project is funded under the *eContentplus* programme, a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable.

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1. Introduction

This report has been produced by the Nederlands Filmmuseum, leader of Work Package 5 dealing with Intellectual Property Rights Management. For the EFG web portal to eventually become an ever-growing space, adequate rights clearance procedures are needed. In order to formulate these procedures the Nederlands Filmmuseum has developed two questionnaires to assess the legal frameworks of the consortium members. Both documents were sent out in October 2008 and the deadline for returning the completed questionnaires was the 31st of December 2008.

The aim of the first questionnaire, titled *Film Clearing*, was to clarify whether a film is protected under national law and who is regarded as a rights holder of a film. Firstly, it is of importance to establish the exact requirements for a certain piece of (film) art to be considered “a work” in national copyright legislation. Certain legal frameworks require a work to have a minimum level of “originality” for it to receive copyright protection. In copyright legislation usually the authors/makers of work are considered to be the holders of copyright.

Copyright consists of two types of elements: personal or moral rights and exploitation rights, in practice the latter are also referred to as economic rights. Moral rights are closely linked to the author, they consist of the right to be named and the right to uphold the integrity of a work. An example of infringement on the integrity of a work could for instance be the unauthorized colouring of a black and white film, which can distort the character of a work. Exploitation rights are commercial rights that enable the exploitation a work, mainly by making copies and distributing these.

With regard to film, there can be various rights holders, which all are able to oppose certain uses of a film. It can be very difficult and time-consuming to identify the current rights holders of a film, as it often is the case with older films that original rights holders have already passed away. In the absence of a final will and testament, inheritance law determines who will be the heirs of copyright. Exploitation rights can be licensed for use to third parties, in these cases bankruptcy of either the licensee or licensor can also complicate the identification of the actual copyright holder.

In certain legal frameworks there is the assumption that authors (such as director, scriptwriter and scenario writer) have assigned their exploitation rights via a contract to the producer (work for hire). This makes the search for a rights holder less complicated since in this case there is only one single right holder.

The second questionnaire circulated was titled *Public Domain & Guidelines*. The questions posed here had the main aim to determine which kind of films are still protected by national

copyright law. If protection periods change in national law, are these provisions retro-active? If works are no longer protected by copyright, they become public domain and may be used by national archives and the general public without prior consent of former rights holders.

In the public domain questionnaire a focus also lies on how to deal with works whose authors are unknown or cannot be traced – so called orphan works.

This report gives an overview of the returned questionnaires' results¹. A brief overview will be given of the copyright legislation in the countries of the consortium member states. In the conclusion differences and similarities will be discussed.

Each archive commissioned the answering of the two questionnaire archive to an attorney specialised in media law or a comparable field.

¹ See Annex 1 and 2

2. Legal frameworks in the EFG consortium member states

2.1 Deutsches Filminstitut - DIF (Germany)

The current legislation is the Copyright and Neighbouring Rights Act of 9th September 1965. Copyright expires 70 years after the author's death, if there are several authors it expires 70 years after the death of the last surviving author. Protection period always begins on 1 January of the following year.

2.1.1 The work

The Copyright Act distinguishes between films & audiovisual works that lack the authorial creativity. The latter are referred to as "Laufbilder". A work is considered a film, if it is an intellectual creation by its author, e.g. by means of camera work, editing, selecting the material and its main aspects or commentary. However, if it is only a mere rendition of the activities taking place with the common technique of camera work, than it is not considered a film but only deemed to be a so-called "Laufbild". "Laufbilder" are only protected for a period of 50 years, starting from the publication of the picture carrier or its lawful communication to the public. If neither of this has happened, the protection period starts with the date of creation. Before the Copyright Act of 1965 came into force, "Laufbilder" were not protected at all. However, "Laufbilder" are very rare as most audiovisual works have a kind of originality to them.

2.1.2 The makers

Copyright on films expires 70 years following the year after the death of the last surviving author of a film. As authors count the following film makers :

- Main director
- Screenplay writer
- Dialogue writer
- Composer of the film music

No other person involved in the making of a film is regarded as an author, so this list is exhaustive. The producer of the first fixation of a film has the exclusive right to use such fixation.² However, this only applies to films first fixated after 1 January 1966. The film

² According to Sec. 94 of the Copyright Act

producer is presumed, in case of doubt, to have acquired all exploitation rights in the film for all types of uses without the authors' right to object.

2.1.3 Orphan works

The protection period of works whose authors are unknown terminates 70 year after the publication of the work.³ Also, if the work is not published within 70 years of its creation, the copyright expires after that period of time. In case the author reveals himself he will regain the copyright.

2.1.4 Other rights holders

The actors that participate in the film have rights as performers also known as neighbouring rights.⁴ These rights include in particular the right of recognition, the right to be named (Sec. 74 CA) as well as the right to oppose distortion and mutilation of the performance (Sec. 75 CA). The performer does not need to be named in the production of a film if it involved disproportionate efforts. The performing artists can only oppose distortion or other impairments of their performances in dishonourable productions.

German law does not acknowledge the work made for hire-doctrine (such as in the US). Only natural persons are deemed to be the creator of a work, and thus its author. This is also the case with commissioned work. Therefore, film production companies can never hold authors' rights. They can only hold exploitation rights. Thus, the protection periods is determined according to the general rules, Sec. 65 para. 2, Sec. 64 CA.

For films that were produced based on contracts dated between 1 July 2002 and 31 December 2007 the film producer is presumed to have acquired all exploitation rights in the film for all uses that were known at the time of the contract.

For films that were produced based on contracts between 1966 until 30 June 2002: in case of doubt – i.e. when no further manners of use were contractually specified – the film producer only acquired the right to use the work in its designated manner, namely the right to publicly present the cinematographic work and/or to broadcast the film on TV.

For contracts that were concluded after 1 January 2008 it is deemed that any author of a film has granted exclusive rights to the film producer to utilise the film in any known and unknown manner, if not stated otherwise in the contract.

³ According to Sec. 66 sub 1 of the Copyright Act

⁴ According to Article 73 of the Copyright Act

Public libraries, museums and archives are permitted to make available and display published works at electronic reading places, for private use and research only.⁵

2.1.5 Transfer/Inheritance/Bankruptcy

Author's rights cannot be transferred other than via testamentary disposition. No legal entity or employer can be deemed to be the author of a work. In case of an author's death the national inheritance law applies. According to this, the children of the deceased (first-degree relatives) are heirs at law. If the deceased does not have any children, his parents, their children (second-degree relatives) or – if these persons do not exist – the deceased's grandparents or their children (third-degree relatives) are his heirs at law. Besides, the deceased's surviving spouse inherits one fourth of the legal estate if the deceased has any first-degree relatives, or one half of the legal estate if there are second-degree relatives- or grandparents.

In case of bankruptcy there is a distinction between the licensor and the licensee. If the licensor is declared bankrupt, the liquidator can terminate existing licensing agreements with the licensees (their rights are rather weak). New legislation aims at not giving the licensor's bankruptcy any more effect on the continuity of licensing agreements.

Licensee's bankruptcy does not have any direct effect on the licensing agreement. However eventually the licensee will not be able to pay the licensing fee and as a consequence will be breaching contractual obligations. The licensor will then be able to terminate the agreement.

2.1.6 Collecting societies

The following collection societies are relevant for the production and exploitation of films:

- GEMA (composers, songwriters, music publishers)
- VG Wort (authors, publishing houses)
- VG Bild-Kunst (authors of works of fine arts and film works, photographers)
- GVL, Gesellschaft zur Verwertung von Leistungsschutzrechten (performers, tour / event organizers, phonogram producers, video clip producers)
- VFF, Verwertungsgesellschaft der Film- und Fernsehproduzenten mbH (film producers, broadcasting companies)
- GWFF, Gesellschaft zur Wahrnehmung von Film- und Fernsehrechten mbH (film producers, film authors, television producers, videogram producers)

⁵ According to Article 52b of the Copyright Act

- VGF, Verwertungsgesellschaft für Nutzungsrechte an Filmwerken mbH (German and foreign film producers, film authors, television producers, videogram producers)
- GÜFA, Gesellschaft zur Übernahme und Wahrnehmung von Filmaufführungsrechten mbH (producers of erotic and porn films)
- AGICOA, Urheberrechts-Gesellschaft mbH (film producers, film distributions)

2.2 La Cineteca del Comune di Bologna – CCB (Italy)

2.2.1 The work

Copyright legislation in Italy is codified in Law no. 633 of April 22, 1944. Cinematographic works are protected by copyright.⁶ However copyright law does not protect mere recordings of images, such as live-coverage seeing as they lack certain originality.

2.2.2 The makers

In the latest revision of the copyright law, the term for protection was set from 50 to 70 years from the death of the last surviving:

- Film scenario writer
- Screenwriter (including author of the dialogue)
- Composer of music created specifically for the work in question
- Artistic director

These authors also are the holders of the moral rights to the work; these rights are inalienable. Italian copyright does not attribute any authorial value to the producer. The rights of the producer are limited to cinematographic exploitation. Protection period for these exploitation rights are fifty years from the time of first “fixation” of the film; film printing or making available to the public.

Royal Law Decree no 1950, 1925, had a protection period of 50 years after the death of the last author and there was a distinction between the author of the script and the author of the film. This protection period was changed by Law no 633, of 1941 in which a protective period was established of 30 years, from the moment of first protection. In 1997 this protection period has been enhanced to 70 years.

⁶ According to article 6 Law no. 633

Cinematographic works, produced and distributed before and during the Second World War enjoyed an additional extension of six years for the commercial exploitation of intellectual property. This extension was revoked in 1993.

Whoever has published an anonymous or pseudonymous work may enforce a copyright until the identity is revealed. Copyright duration is 70 years from the date of first publication.⁷ The author has the right to reveal himself at any time.

A legal entity cannot be indicated as the author of the work and therefore cannot hold copyright.

2.2.3 Orphan works

Whoever has represented, executed or published an orphan, anonymous or pseudonymous work is authorized to exercise copyright, until the author reveals him/herself. The author of an anonymous or pseudonymous work has the right to reveal himself at any time. When this happens, despite any agreement to the contrary, the author's successors are required to indicate his name in the publications and in all of the means of distribution and communication of the work in question.

2.2.4 Specific rules

Copyright of works created and published under the name, on behalf and at the expense of the State, Provinces and Municipalities, remain with these institutions. This also applies to private non-profit organisations. In this case, the exclusive rights to the work last for 20 years from the time of the first publication.

The producer of a film is liable to re-pay any kind of public funding within five years after the money has been received. If this does not happen, then the Ministry for Cultural Assets and Activities holds, on behalf of the State, full ownership of the rights to economically exploit and use of a cinematographic work.

State libraries, sound and film archives as well as public entities are permitted to reproduce one copy of phonograms and video recordings containing cinematographic, audiovisual works or sequences of moving images as long as it is kept within their organisation and no economic advantage – direct or indirect – is taken from it.

⁷ According to article 9 Law no. 633

2.2.5 Transfer/Inheritance/Bankruptcy

Rights of authorship to the work – both moral and economic – belong to the four co-authors. Authors' rights are basically non-transferable and indefeasible. They are inheritable only.

Inheritors of authors' rights are the spouse and the children, if there are none, the other direct ascendants and their descendants. Exploitation rights are protected for seventy years after the death of the last of the four co-authors. If the author has not made other provisions, the right to economic exploitation must remain undivided between the coheirs for a period of three years after the author's death.

With regard to the medium of the work, Italian legislators have introduced a series of remarkable changes over time so as to keep pace with technological progress. With regard to cinematographic works fair compensation should be guaranteed for authors even in the event that the cinematographic works are used in a different manner than foreseen.

Italian legislation does not allow for the holder of copyright (authors' right) to be a company. The producer's associated rights to the commercial exploitation are a different matter; bankruptcy may concern the production company. In such a case, any transfer of rights to use of the work for profit is assumed by the bankruptcy trustee, and the duration of protection of the work remains unchanged.

2.2.6 Collecting Societies

The S.I.A.E. (Societa Italiana degli Autori ed Editori – Italian Society of Authors and Publishers) maintains a special film registry. Since 1994 the Public Registry for Cinematography was introduced (this a registry of protected works by the Ministry for Cultural Assets and Activities). It contains a roll of all of the works produced, imported and distributed in Italy and it is divided into five sections:

- Italian feature-length films
- Feature-length films from EU countries
- Feature-length films from countries outside of the EC
- Italian, European and non-European short films
- Italian, European and non-European news films

In order to enrol, the following information has to be registered: the name and domicile of the producer or importer and of the distributor; the work's title (working or definitive); for Italian feature-length films, an indication whether it is a film of national production or a film of national cultural interest; the film's nationality; names and nationalities of the director, the film

scenario writer, the screenwriter, the music composer and the author of the Italian version of the dialogues; for Italian films, the name and nationality of the cinematographer, the art director and the editor; the date on which work began for Italian films or on which importation began if the film came from outside Italy; the date of the first screening and other notes regarding the life of the cinematographic work after its completion (contracts, agreements and acts in reference to its commercial use).

This registration is mandatory for cinematographic works that receive public funding. This registration has more an informative than a constitutive value.

Production companies may be registered in the Public Film Registry, apart from that Italian production companies must be enrolled at the Chamber of Commerce.

If cinematographic works are published on the web, they should have a notice regarding the fulfillment of obligations relative to the Copyright regulations and associated rights and must also list the penalties for illegal downloading.

Films that today belong to the public domain sector are:

- Films whose makers have died before 1939
- Unknown authors: films that were published before 1939
- Films made before 1989 produced and published by State, Provinces, Municipalities and non-profit organisations.

2.3 Det Danske Filminstitut – DFI (Denmark)

2.3.1 The work

In 1995 copyright legislation⁸ underwent a general revision. In the old regime the protection was 50 years after the death of the author (now applied with retro-active effect). There is no originality criterion.

2.3.2 The makers

Duration of copyright is 70 years after the authors' death of a cinematographic work. With regard to film the protection shall last until 70 years after the death of the last of the following:

⁸ Consolidated Act on Copyright 1995

- principal director
- author of the script
- author of the dialogue
- composer of musical score specially composed for the work

According to Danish case law a certain amount of protection is provided to famous people against having their portraits misused for commercial purposes, e.g. if pictures of them are used in commercials. These rules also apply to actors in films. The protection extends beyond the lifetime of the actors, although it has not been decided by the courts for how long. There is a legal presumption that copyright has been transferred to the film producer, legitimating the film producer with regard to the use of the film. This is a limited presumption and does not apply to existing works, scripts, dialogues and musical works created specifically for the film, and the principal director of the film.

Copyright in a work of unknown authorship that has not been made public shall last 70 years after the end of the year in which the work was created.

There are no specific rules for makers who were employees, also known as work for hire. Protection period is only linked to natural person/legal entity makers.

Performers: neighbouring rights 50 years after performance or first communication to the public.

2.3.3 Orphan works

If a work has not been published previously, the person who lawfully makes the work public or publishes it for the first time after the expiry of copyright protection, shall have the exploitation rights to the work. This protection shall last for 25 years after the end of the year in which the work was made public or published. There are no specific rules on orphan works.

2.3.4 Extended collective license agreement

In 2008 the “extended collective license agreement” was included in the Copyright Act. This system entails that under certain circumstances an extension effect is given to clauses in a collective agreement. The extended collective license agreement applies to rights holders who are not members of the contracting organizations. Introduces a general access to enter into agreements which extend to non-represented right holders. It is not clear whether this provision can be used for the clearing of orphan works.

Special exemptions for cultural institutions:

- Museums may use and distribute copies of works, but not for commercial purposes
- Institutions may make copies for the purpose of back-up and preservation
- Incomplete copy: the institution may make copies of the missing parts, unless work can be acquired through general trade or from the publisher
- Libraries may make copies of published works that should be available in the library's collections, but which cannot be acquired through general trade or from the publisher

Section 16 of the Copyright Act basically gives the cultural institutions the exceptional right of reproducing protected works for limited and specific purposes such as preservation, completion of collections and legal deposits. This does not include the right to make the work accessible to the general public.

2.3.5 Transfer/Inheritance/Bankruptcy

As a general principle the rights under the Copyright Act can be assigned wholly or partially. If it is explicitly stated in the agreement that it covers both known and unknown forms of exploitation the legal entity to which the rights had been transferred will normally have the right to new forms of exploitation. If, however nothing is specified in the agreement and the form of exploitation was not known at the time of entering into the agreement, there is a presumption that the author has not transferred the right.

Heirs of copyright are author's spouse and his children.

In case of bankruptcy: author's rights cannot be subject to creditor proceedings. However, this provision does not apply to a legal entity which has acquired the rights. If a film production company is declared bankrupt the transferred rights can be used to the extent that the film production company in the first place were entitled to reassign copyright.

There is not a central register which keeps records of ancestors and descendants. There is a central public register for companies, but no central register for bankruptcy.

2.3.6 Collecting societies

It is necessary to include the collecting societies of all relevant right holders. Copydan has gathered all groups of copyright owners in Denmark in one single organisation. Copydan's activities are distributed between five independent collecting societies that manage different copyright areas. There exist no specific rules concerning orphan works.

2.4 Nederlands Filmmuseum – NFM (The Netherlands)⁹

2.4.1 The work

Dutch copyright has been codified in the Copyright Act of 1912. Up to 1972 there was a protection period of 50 years for non-original films. Accordingly, non-original films published before 1922 are in the public domain.

2.4.2 The makers

The protection period for all other films is determined according to the last of the following makers to survive: the main director, screenplay writer, scriptwriter and composer (irrespective of whether such makers were working for an employer as employees, also known as work for hire, or it was a legal entity that published the film). The protection period for films is 70 years after the death of the last surviving maker (Art 40 CA). If on this basis a film ought to belong in the public domain, it is necessary to look at the other types of film makers, since by virtue of Art 51-2 CA protection periods current as at 1 July 1995 cannot be curtailed. There is a shorter protection period of 50 years in respect of other types of makers (current period of protection as per 1 July 1995).

If such persons cannot be traced following a diligent search (credits, IMDB), then recourse must be had to the following principal rules to determine the protection period:

The maker is a legal entity:

- The protection period for films published by a legal entity where the natural person makers are not named on the work is 70 years following the publication (Arts 8 and 38-2 CA).
- The protection period for films that are deemed to have been made by a legal entity by virtue of an employer/employee relationship is 70 years following publication (Arts 7 and 38-2 CA).

The protection period for films from unknown makers that have never been published is 70 years following the making of the film (Art 39 CA). The protection period for films from unknown makers that have been published is 70 years following publication of the film (Art 38-1 CA).

⁹ As the Nederlands Filmmuseum has been the author of the questionnaires sent out to the consortium member in our answers we have decided to focus mainly on the public domain issue and rights clearance

On the basis of these principles one can determine that the following categories of films belong in the public domain (applicable in 2008):

1. Films published before 1922 that have a non-original character (newsreels, documentaries, etc.).
2. Films whose four types of makers specified in Art 40 CA died before 1938 and whose other makers died before 1958.

If these makers are unknown:

3. Films that were lawfully published before 1938 by a private or public law legal entity whose natural person makers are not specified (nor later became known).
4. Films that were lawfully published before 1938 by a legal entity deemed to be a maker (as employer).
5. Films made before 1938 that were never published and whose maker is unknown (following a diligent search).
6. Films made before 1938 and published and whose maker is unknown (following a diligent search).

Furthermore, the following copyright exception applies, whereby a further category of films is free to be used (not entirely equivalent to the public domain), see Art 15b CA:

7. Films published by or on behalf of public authorities are free under certain restrictions.

2.5 Národní Filmový Archiv - NFA (Czech Republic)

2.5.1 The work

The Copyright Act which came into force in 2000 mentions as protected works amongst others “an audiovisual work like a cinematographic work”¹⁰, this law came into force in 2000. There is no distinction between original and non-original films. Earlier there was a protection period of film works from the moment of publication/screening. Currently the protection period for producers is 50 years and for authors 70 years.

¹⁰ Article 2 Law No. 121/2000 on Copyright, Rights related to copyright and on the amendment of certain laws.

2.5.2 The makers

Author of a film is the director¹¹, right of use of the film belongs to the producer. Exploitation rights to the audiovisual work shall be calculated from the death of the last surviving of the following:

- the director
- author of the screenplay
- author of the dialogue
- composer of musical score of the film¹²

Until 1992 all films made before 11.08.1945 were put under state ownership. The whole cinematography industry also was under state control and ownership. After 1992, the ownership of what was produced until 1964 has been given under the control of National Film Archive. For films produced from 1965 the Czech Republic's State Fund is in control.

2.5.3 Orphan works

Authorship Protection organisations look up authors, if they do not succeed in this, works may be used freely.

2.5.4 Transfer/Inheritance/Bankruptcy

The Copyright Act divides copyright into moral rights¹³ and exploitation rights. Moral rights cannot be transferred and end with the author's death, with the exception of right to claim authorship of the work, work may not be used in a depreciative manner and the name of the author must be indicated. Protection may be claimed by any of the author's kin, this right shall exist even after the term of the exploitation rights have ended. The legal entity associating authors or the relevant collective administrator of rights may also claim this protection.¹⁴

Rights to films made through third party commissions belong to the commissioner, as stated in the contract.

Legislation does not allow for the licensing of future forms of exploitation.

¹¹ Article 63 Law No. 121/2000

¹² Article 27 sub 5 Law No. 121/2000

¹³ Article 11 Law No. 121/2000

¹⁴ Article 11 sub 5 Law No. 121/2000

Rights are transferred to legal successor through agreements or testaments. If these do not exist, rights pass to the State.

2.5.5 Collecting Societies

Some author's rights have to be administrated collectively¹⁵, if these organisations cannot find a certain author, the work is considered to be free.

The following collection societies are relevant for the production and exploitation of films: DILIA, Theatrical, Literary and Audiovisual Agency. OSA, society for the protection of the rights of music authors and publishers. Intergram, an independent association of performers and producers of sound and sound-visual recordings.

2. 6 Filmarchiv Austria - FAA

2.6.1 The work

Protection of artistic works is regulated by the "Urheberrechtsgesetz" (Copyright Act) from 1936, which was last amended in 2006. The extent of the processing is relevant for the calculation of the protection period: for instance if a black-and-white film is being merely coloured, there is no influence of the protection period of the original film. However, if a substantial processing takes place (direction, screenplay, dialogues as well as film-music), then the protection period will be calculated following the death of the last surviving main director, screenplay writer, scriptwriter or composer (§ 62).

2.6.2 The makers

The makers of a film are (art 62):

- main director
- screenplay writer
- scriptwriter
- composer

The protection period is 70 years after the last one of the above has passed away. For the calculation of the protection period, counting starts on the next following year. If a film is the adaptation of another work, the film becomes an original work on its own.

¹⁵ See Title IV Article 95 of the Federal Law on Copyright in Works of Literature and Art and on related rights

In Austria special rules apply for commercially produced cinematographic works. A work is “commercial” if this activity is independent and periodic (regular, continuous) manner and with the intent of profit or other economical profit. An activity is exercised independently when done at one’s own expense and (economical) risk. Also one single activity (ergo not periodic) can be seen as a regular one, when for its fulfilment, a longer period of time is required OR the intent of repetition can be anticipated. In general cinematographic works which have a producer, will fall under this legislation.

The exploitation rights of such films shall belong to the owner of the film company (film producer). The film producer and the author shall each be entitled to one-half of the statutory claims to remuneration, unless agreed otherwise. The person designated as the producer in the usual manner on the copies of a cinematographic by mention of this true name and of his company, shall be presumed to be the producer.

The author is a person who has participated in the creation to such an extent as to give the work as a whole the character of an original intellectual creation. The author may require that he/she be designated on the film and in advertisements as the author thereof. Furthermore the author’s permission is required for any alterations to the work. The consent of the author is also required, in addition to the authorization of the film producer, for the exploitation of adaptations and translation of the work. This is only not needed in the case when translations and adaptations are necessary for the normal exploitation of the work in accordance with accepted fair practice. Exploitation rights of commercial films belong *cesio legis* to the producer of the film. There are some exceptions: namely that the author’s consent might also be required for substantial modifications as well as for translations.

Due to WWII, 7 years prolongation of protection period was added for works which protection established before January 1st, 1949 and it was still legally valid on October 14th 1953.

2.6.3 Transfer/Inheritance/Bankruptcy

Copyright is not transferable, except for inheritance (art 23)¹⁶. The exploitation rights of a work may be transferred by the author to any third party.

A specific copyright exemption for archives and museums does not exist in the copyright legislation.

Future forms of exploitation may be passed on, it is relevant what exactly is defined in the contract with regard to forms of exploitation.

¹⁶ See article 23 sub 1 and 3 of the Federal Law on Copyright in Works of Literature and Art and on

Copyright can be registered within the Copyright Register held by the Austrian Minister of Justice. This can be used as a source to track down authors.

There are legal licenses (for instance for viewings on school) and contractual licenses (what is contractually agreed upon)

2.6.4 Collecting societies

Licensing authorities where possible right holders may be retrieved are:

- AKM: music composer
- VDFS: film directors and actors
- LVG: literary collecting society
- LSG: collecting society for producers of phonograms and music videos and performing artists

2.6.5 Orphan works

The protection period is also 70 years for works, which do not have a clear author; date of creation can be taken as a starting point. If the work is published before the expiry of that period, copyright shall terminate 70 years after the work is made public. The publisher of the work of an unnamed author shall be considered to be the holder of the copyright of the work.

2. 7 La Cinémathèque Française – CF

2.7.1 The work

The Intellectual Property Code is of 1957. The protection period for a film is calculated with reference to the author him/herself if the author is known, or to the date the work was first made public if the identity of the author or authors is unknown. In 1997 the protection period was extended from 50 to 70 years post-mortem. Protection period of films: runs from the death of the last of the surviving joint authors of the film.

2.7.2 The makers

Authors of an audiovisual work are:

- Author of screenplay
- Author of the adaptation

- The author of spoken text
- The composer of musical compositions
- Director
- Authors of the pre-existing work

Another persons can claim authorship too, but the burden of proof is on them to establish whether they had any creative on creative contributions to creation of the film.

When entered into a production agreement with the authors, the producer is presumed to be the assignee of the exploitation rights. A written audiovisual production contract is required. There is an assumption that these rights have been transferred to the producer. The producer is considered to be the individual or legal entity that has taken the initiative and responsibility for making the work, in practice producer enters into agreements whereby exploitation rights are assigned.

If a work is made public *after* the 70-year post-mortem protection period: an extra protection period of 25 years starting from the 1st of January following the year of publication.

2.7.3 Other rights holders

Neighbouring rights:

The protection period for neighbouring rights is 50 years as from 1 January of the calendar year in which:

- The work was performed (in the case of performing artists);
- The first fixation of the phonogram or videogram took place (in the case of phonogram and videogram producers);
- The programmes were first communicated to the public (in the case of audiovisual communication companies).

However, even if the actor's performance is no longer protected by neighbouring rights, it cannot be exploited separately from the film as a whole.

The right to privacy expires at the time of the person's death.

A producer must obtain authorisation from actors or other persons filmed to use their likenesses in order to exploit the images shot, and such authorisation must be granted for the entire time that such images will be exploited. This right expires upon the death of the person filmed.

2.7.4 Orphan works

After diligent search the *Tribunal de Grande Instance* may order an appropriate measure. Claimant may be authorised to exploit a film. It is possible to file a petition with the *Tribunal de Grande Instance* requesting authorisation to exploit a film. The petitioner must prove that he has a legitimate in bringing the action. Burden of proof of diligent search and non-existence of successors is with petitioner. Also the Minister of Culture may take this action. These proceedings can bring forth a court-appointed agent.

Protection period starts 70 years from 1 January of the calendar year following the year work are published. If any such work is published after the first protection period an additional 25 years will apply (again from the 1st of January following the year of publication)

An author can never lose authorship; therefore an author who is an employee does not lose authorship due to the fact that he is an employee. Only the exploitation rights can be totally/partially assigned to the employer through a contract. Moral rights can never be assigned. An assignment of rights to the employer is not automatic and is not presumed. A legal entity must prove that there has been an assignment of rights in its favour or the existence of a collective work.

Wartime extensions

World War I: six years and 152 days

World War II: eight years and 120 days

However, these do not apply to extend the 70-year protection period according to the court.

Authors who gave their lives for France

Works of authors who gave their lives for France have an extended term of copyright protection: these works are protected for 100 years.

Reproduction of a work is allowed solely for preservation purposes or to protect the manner in which the work may be consulted in publicly accessible libraries. No economic or commercial benefit may be sought.

2.7.5 Transfer/Inheritance/Bankruptcy

Exploitation rights can be transferred through a written agreement, all the rights that are being transferred have to be mentioned explicitly in the contract. Also scope, purpose, place and duration have to mention for the agreement to be valid. A mere “including all rights” is

not sufficient. The agreements in which the rights are transferred have to be in a separate document than the agreement for publication of the work itself.

Moral rights are inalienable, therefore these stay with the author even though the work has been commissioned or was made in employment.

The author has to designate the executors of his rights. If none have been appointed: author's descendants, the author's spouse, other descendants and lastly universal legatees.

Future forms of exploitation can be settled in an agreement, two safeguards have to be included:

- Express and unambiguous provision that, draws the author's attention to the provision
- Author must be provided with a share of the profits generated by this unforeseen form of exploitation

A total transfer of future works shall be null and void (L 131-1).

The mere start of bankruptcy proceeding has no effect on the audiovisual production contract. If a production company has ceased doing business for more than three months or if the court orders liquidation: joint authors (acting jointly or separately) may request that the audiovisual production contract be terminated in order that they regain control over their rights. Only the rights that were assigned to the producers by the author itself are regained.

No mass sales are allowed; each audiovisual work has to be sold separately (public policy principle). One month before decision concerning a sale, the administrator has to inform each of joint authors and co-producers thereof.

To track down authors the following sources may be consulted: there is a mandatory national database for registering last wills & testaments, can only be consulted by a judicial officer. Royalty societies. Trade companies register, cinematographic register.

2.7.6 Collecting Societies

Royalty collection societies may be involved in the process of licensing rights if a joint author of a film is affiliated with a royalty collection society. Although this facilitates management of rights, membership is not mandatory and is entirely up to the author or his heirs.

Relevant collecting societies are:

- SPPF & SPPP: phonogram producers of
- SACEM: music composers
- SACD: composer of dramatico-musical works, works of fiction adapted as a movie or broadcast programme etc.
- SDAJ: performers

Calculation of protection-period:

- **In the case of works of joint authorship:** 70-year period following the year in which the last of the joint authors dies.
- **In the case of pseudonymous, anonymous and collective works:** 70 years as from 1 January of the calendar year following the year in which the work was published. (If it is published after 70 years of creation, an additional 25 years applies)
- **In the case of posthumous works: follows all other works of the author (50 years after death published, then 20 years of protection left)** If the author's works have fallen into the public domain at the time the work is made public, the protection period for posthumous works is 25 years as from 1 January of the calendar year following the year in which the work was published.

Music:

- Specifically composed to score a film, joint author
- "commercial" music, already in existence and chosen to score a film, also an author

The title of a film can be registered as a trademark with the *Institut National de la Propriété Intellectuelle*. This protection is valid for ten years as of the date the trademark is registered and registration can be renewed indefinitely.

2. 8 Tainiothiki tis Ellados – TTE (Greece)

2.8.1 The work

The current Greek Copyright Act came into force in 1993. There is no distinction between original and non-original films; the legislation merely mentions "audiovisual works".

Previously the protection period was 50 years, the previous legislation did not contain any specific for the protection period of films: all natural person who had a creative contribution to the film were deemed to be the authors of the film. In 1986 the legislation was changed so that only the director could be considered as the author of the whole film. When this provision was implemented no transitional rules were applied.

2.8.2 The makers

When in 1993 the current act came into force, the protection period extended to 70 years from the death of the director. Now the protection of copyright lasts until 70 years after the death of the last surviving of the following authors:

- The principal director
- The screenplay writer
- The dialogue writer
- Composer of the score for the film

2.8.3 Orphan works

For anonymous works the protection period lasts for 70 years after the work is lawfully made available to the public. No mention is made in the legislation whether the publisher shall have the copyright on the work. The producer has a related right, which expires 50 years after either fixation or lawful communication to the public.

Only natural persons are regarded as the author of a work, even when a film is made in employment, or following a third party commission. A legal entity cannot be deemed to be the author of the film. Exception to this rule are exploitation rights on works created by employees under any work relation of the public sector or a legal entity of public law in execution of their duties are transferred to the employer, unless otherwise provided in the contract.

Archives and libraries may make copies of the work already in their permanent collection, for the purpose of retaining that additional copy or transferring it to another non profit-making library or archive.

Copies for preservation in the National Cinematographic Archive may be made without the consent of the right holder; this is subject to a decision by the Minister of Culture (art 23).

2.8.4 Transfer/Inheritance/Bankruptcy

Exploitation rights may be transferred; acts with this aim have to be concluded in writing. Otherwise these may become void, if the author invokes nullity. If the duration is not specified, this shall be limited to five years. In all cases involving the transfer of the economic right, the person who acquires the right or the license shall ensure that within a reasonable period of time, the work is accessible to the public via an appropriate form of exploitation.

The producer of the film is obliged once a year to give the author of the work in writing all information concerning the exploitation of the work, showing him also all relevant documents.¹⁷

Moral rights are not transferable. After the 70-year protection period, the State, represented by the Minister of Culture, may exercise the rights relating to the acknowledgment of the author's paternity and the rights relating to the protection of the integrity of the work deriving from the moral right.¹⁸

No specific mention of heirs in copyright legislation is made. The general rules of inheritance apply:

There are six classes of intestate heirs:

- First class: descendants, children/grandchildren. Surviving spouse receives one fourth of the estate
- Second class: parents, brothers and sisters and their children. Surviving spouse receives half of the estate
- Third class: grandparents their children and grandchildren. Surviving spouse receives half of the estate
- Fourth class: great grandparents. Surviving spouse receives half of the estate
- Fifth class: Spouse inherits all the estate
- Sixth class: in the absence of relatives, the heir is the Greek State

In the case that the holder of the exploitation rights becomes bankrupt, the exploitation rights become part of the bankruptcy estate.

2.8.5 Collecting Societies

To find right holders the following institutions should be contacted:

- The Greek Film Archive Foundation
- Athena (collecting society for directors and screenplay writers)
- Hermias, Dias, Iridanos, Promedia (leading societies for film producers)
- AEPI for composers of music and writers of lyrics

¹⁷ art 34 sub 3 Law no. 2121/1993 Copyright, related rights and cultural matters

¹⁸ article 29 sub 2 Law no. 2121/1993 Copyright, related rights and cultural matters

2.9 Maygar Nemzeti Filmarchívum - MNF (Hungary)

2.9.1 The work

The current copyright legislation came into force July 1, 1999.¹⁹ A motion picture is a work that is expressed by a series of pictures arranged in a predetermined order together with accompanying sound. There has never been a distinction between original/non-original films. Laws, public resolutions, official communications and documents and other similar regulations are not copyright protected.

Copyright lasts for 70 years. For motion picture works this must be calculated from the first day of the year following the death of the author who dies last. If a person lawfully publishes a previously unpublished work, then he or she is entitled to legal protection to the extent of the author's exploitation rights for 25 years. An author can transfer the exploitation rights to a producer through a contract. Previously duration was 50 years; in 1994 this was extended to 70 years. This extension also applies to works whose protection period had already passed.

2.9.2 The makers

Authors are:

- Author of the literary and musical works prepared for the motion picture
- Director
- All other persons who made creative contributions to the production of the motion picture

Unless otherwise agreed between the authors, the director shall represent the authors in objecting to alterations of the cinematographic creation.

2.9.3 Orphan works

The duration of the copyright is also 70 years, calculated from the first day of the year following the year in which the work was first made public. There is no legal obligation to search for unknown authors/legal successors. If the author is unknown, protection can be calculated from the first publication of the work. Whoever publishes the work will be able to exercise copyright.

¹⁹ Act No. LXXVI of 1999 on copyright

Due to former communist nationalization laws all films produced before January 1, 1946 have become state property. These are managed by the Hungarian National Film Archive.

Composers of the musical score will always retain their rights. Performers have neighbouring rights of 50 years.

2.9.4 Transfer/Inheritance/Bankruptcy

After the death of an author, the moral rights as any natural or legal person who has been entrusted by the author to care for his/her literary, scientific, academic, or artistic estate can exercise the moral rights set out in the Act. This can be done within the duration of copyright protection.

If no such "moral rights trustee" has been designated by the Author or if the designated person fails to take action, moral rights protection can be taken care of by the natural and / or legal entity / entities, who has / have obtained the author's exploitation rights under the title of inheritance.

Once the duration of copyright protection has terminated, the affected collective rights management organization or organization for authors' representation is entitled to take action – on the grounds of violating the memory or good reputation of the deceased author.

Additionally, lawful users (typically under license agreements) are entitled to take action in defence of an author's specific moral rights if the author has given his/her express consent to such in the given license agreements.²⁰

In the absence of any contractual agreement to the contrary, the employer, as the legal successor to the author, obtains exploitation rights once a work is handed over if the preparation of the work was the author's obligation within the scope of his/her employment.²¹ Authors are entitled to appropriate remuneration if the employer authorizes (licenses) a third party to use the work or assigns the exploitation rights in connection with the work to a third party. If the preparation of a work is the author's obligation within the scope of his/her employment, the delivery of the work is considered as approval for publication.

Authors can conclude an agreement with a producer in which the right of use for the motion picture work and the right to license such use to third parties can be transferred. The

²⁰ Article 14 of Act No. LXXVI of 1999 on copyright

²¹ Article 30 of Act No. LXXVI of 1999 on copyright

producer becomes the owner of the exploitation rights. The producer is the natural or legal person, which initiates and organizes the creation of the film.²²

There is an assumption that a contract will be concluded between the author and the producer of a cinematographic creation. Via this contract the author assigns the right of use of the cinematographic creation to the producer. Producer becomes owner of the exploitation rights. Not included in this rights however are the exploitation rights connected to:

- Broadcast
- Leasing right pertaining to works that are included in motion picture works
- Simultaneous and unaltered retransmission to the public, by broadcast, cable or other means

It is assumed, unless otherwise contractually agreed, that the author assigns the use of the cinematographic creation.²³ Excluded is the right to broadcast.

Specific protection of film producers is mentioned, consent is required for:

- Reproduction
- Distribution, including lending to the public
- Making available to the public²⁴

Up until 1999 no such transfers were possible, authors were entitled to grant specific licenses for specific categories of use and exploitation.

Composers of musical works cannot transfer their right to the work as a whole to the producer.

In the event of bankruptcy, the copyright becomes part of the bankrupt's estate in case there are specific contractual provisions preventing this.

There are no special provisions for archives or museums.

Only transfer of exploitation rights is possible, not of moral rights.

²² Article 65 of Act No. LXXVI of 1999 on copyright

²³ Article 66 of Act No. LXXVI of 1999 on copyright

²⁴ Article 82 of Act No. LXXVI of 1999 on copyright

Future forms of exploitation are explicitly excluded for licensing or transfer of copyright.

2.9.5 Collecting societies

Licensing societies that can be consulted when trying to find authors:

- Artisjus (Hungarian Bureau for the Protection of Authors' Rights)
- FilmJus (Hungarian Society for the Protection of Audio-Visual Authors' and Producers Rights)
- EJI (Association of the Arts Unions Bureau for the Protection of Performers' Rights)

Summarizing films that are in the public domain:

- Films whose last creative contributor has died before December 31st 1938
- Jointly created film works where the first day of the year following the first publication of the work is 1 January 1939 or earlier
- Previously unpublished film work whose publication took place before January 1, 1984

2. 10 Lietuvos Centrinis Valstybės Archyvas- LCA (Lithuania)

2.10.1 The work

Provisions of the Law of the Republic of Lithuania on Copyright and Related Rights, which entered into force in 1999, shall apply to:

- Authors and owners of related rights who are citizens of Lithuania/natural persons permanently residing in Lithuania/ legal persons whereof headquarters is located in the republic of Lithuania
- Works first time published in Lithuania
- Audiovisual works: headquarters of producer is in Lithuania
- Architecture erected in Lithuania
- Performers who are citizens of Lithuania
- Broadcasting organisations who's HG are in Lithuania

An audio-visual work is a cinematographic work, fixed in an audio-visual recording medium. 70-year protection after the last one survives of the following: director/ author screenplay/ author dialogue, art director, director of photography, composer of music (specifically composed for the work). There is no distinction between original/non-original films.

2.10.2 The makers

According to Art 526 Civil code copyright authors of an audiovisual work are:

- Director
- Scriptwriter
- Composer
- Director of photography
- Set designer

Exploitation rights are with the producer; unless otherwise provided. The producer is the person who finances and organises the production of a cinematographic film. There is the general presumption that copyrights are transferred to the producer. This copyright lasts for 50 years.

2.10.3 Orphan works

If a work was never published within this period, upon first lawful publication, the protection extends an extra 25 years. The person to first publish the work has exclusive exploitation rights to it. There is no legislation on unknown authors. For works published under a pseudonym applies: The publisher whose name appears on the work shall, in the absence of proof to the contrary be deemed to represent the author and in this capacity shall be entitled to protect and enforce the author's rights until the author of such work reveals his identity and establishes claim.

Changes in the protection of author's property rights in Lithuania:

until 1973	from 1973 to 1994	from 1994 to 1999	from 1999
15 years after death	25 years after death	50 years after death	70 years after

Rights of authors that had not expired before the entry into force of the new law will remain effective. Acts, which did not infringe the past law, shall not constitute infringements under new law. Agreements, which were entered before the current legislation came into force, shall remain valid as long as they comply with provisions stipulated by the law.

Property rights are only protected of authors who died not later than 1969; however this term is only applicable to the authors who were subject to the laws of the Republic of Lithuania until 1994.

Lithuania did not join the Berne Convention before 1995; prior the rights of foreign authors were not protected in Lithuania. Their work is however protected for 50 years.

In any case under protection are works by:

- Lithuanian authors who died in 1969 and in subsequent years;
- Foreign authors who died in 1949 and in subsequent years.

In 2038 protection terms of Lithuanian and foreign actors shall become equal and the term of 70 years after death may be applicable without any exceptions. The protection period of former laws always apply.

Rights of producers of the first fixation of an audio-visual work (film) run for 50 years after the fixation is made. Until civil code of 1994, authors who created the cinematographic film did not have any copyrights to the film.

Producer shall enjoy exclusive rights to:

- a) Reproduction of the fixation of audio-visual work
- b) Broadcasting, retransmission or other communication to the public
- c) Distribution: via sale, rental or lending
- d) Making available to the public (including internet)

The authors of musical works specifically created for an audiovisual work or included in an audiovisual work do not transfer their exploitation rights to the producer.

An author's exploitation rights in a work created by an employee in the execution of his duties or fulfilment of work functions are transferred to the employer for the period of five years, unless otherwise provided for by an agreement. The rights of producers of the first fixation of a film shall run for 50 years after the fixation is made. If the film is lawfully established 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 to the public, whichever is the earlier.

Exceptions for museums:

It is permitted without the authorisation of the author or other owner and without remuneration, to use films for the purpose of research or private study of the works kept in publicly accessible libraries, educational establishments, museums or archives. There they can be made accessible to the public via in-house computer terminals on the premises of the

said institutions. If possible, source and name of the author should be mentioned in these contexts.

2.10.4 Transfer/Inheritance/ Bankruptcy

The authors' exploitation rights may be transferred by an agreement, by testamentary succession or by other procedure prescribed by law. Transfer of author's exploitation rights may be full or partial, subject or not subject to payment. The authors' moral rights cannot be subject to transfer to other persons. They exist independently of the author's exploitation rights and are retained by the author even after the transfer of the exploitation rights to other persons or employer.

Transfer may not be applied to modes of use which were unknown. Heirs are children, spouse, and parents/grandchildren. According to the Enterprise Bankruptcy Law assets of an enterprise in bankruptcy or a bankrupt enterprise, and the rights of claim under the debtors' obligations to the enterprise in bankruptcy or bankrupt enterprise shall be appraised and sold. Unsold assets may be transferred to the creditors.

2.10.5 Collecting societies

Register of wills (2000) State enterprise centre of registers manages the register of legal entities. For films created after 1994 LATGA distributes licensing fees. From 1958-1994 the state was responsible for this task.

2.11 Lichtspiel Kinemathek Bern – LKB (Switzerland)

2.11.1 The work

The Swiss Federal Law concerning authors' rights and related rights came into force in 1993. Audiovisual works are protected; there is not distinction in Swiss copyright law between original and non-original films.

2.11.2 The makers

Protection period ends 70 years after the death of the director.²⁵ Up until 1993 the protection period was 50 years. The new copyright applies to all works, excepts for those that fell into the public domain before 1992.

2.11.3 Orphan works

If the author is unknown, the protection period ends 70 years after the first publication.²⁶

2.11.4 Transfer/Inheritance/Bankruptcy

There is no “work-for-hire-rule”. It does not matter whether the director made the audiovisual work as an employee.

All artistic contributors to an audiovisual work are rights holders. There is no presumption of right transfer. Screenwriters are not considered makers of the film, but authors of a pre-existing works. Neighbouring rights for actors and producers, protection period is 50 years calculated from the production of the film.

Rights may be transferred, with the exception of moral rights. There are no specific rules for future forms of exploitation.

Inheritance: if not specifically stated in the will of the rights holder the inheritance is passed down as follows:

- Children & wife/husband
- Parents
- Further related persons

For archives and museums there is a legal authorization for copying films in order to preserve them.

2.11.5 Collecting Societies

Institutions such as the Swiss Film Center and Suissimage can track down right holders. Utilisation of orphan rights requires authorisation by collecting societies, such as Suissimage: only works whose authors are unknown may be used.²⁷

²⁵ Art 30 sub 3 Federal Law on Copyright and Neighbouring Rights

²⁶ Art 31 Federal Law on Copyright and Neighbouring Rights

²⁷ Art 22b Federal Law on Copyright and Neighbouring Rights

3. Conclusion

The feedback we have received from 11 film archives and cinémathèques vary in clarity and usability.

After reviewing all the results of the surveys which were returned, it showed that there are several similarities in the various legal frameworks. This comes as no surprise, seeing as Directive 2001/29/EC has harmonised several aspects of copyright, and has been implemented by the countries of the consortium-members.

The **protection period** has now been extended to 70 years in all the countries, with the exception of France where a special extension applies for authors who died in the war serving the country. The works of these authors have an extended protection period of 100 years.

Most of the frameworks identify four authors of cinematographic works. These are the main director, the screenplay writer, the dialogue writer as well as the composer of the film's score. Hungary and Swiss are notable exceptions. Both countries consider all "artistic contributors" to a cinematographic work to be authors. This can prove to be problematic in identifying the rights holders of a film.

Most Copyright Acts state that only natural persons can be regarded as authors, there a very little exceptions to this rule. The treatment of exploitation rights of works made in employment or that were commissioned can differ. Some frameworks **assume the transfer of exploitation rights** to the employer, others do not. In Italy, the copyright of works created and published under the name, on behalf of and at the expense of State-bodies remain with these institutions.

Not all countries distinguish between **original and non-original works**; in the survey this particular question was not clear to legal experts where a certain amount of originality was not required to be protected via copyright. The issue of originality/non-originality is discussed in more detail in the introduction.

The Czech National Film Archive takes a special position in so far as all films that were produced until 1964 are under their control, this is due to the fact of the previous state ownership of the cinematography industry during the Communist era.

Most legal frameworks do not allow for the **transfer of future forms of exploitation**. This means that in most cases the rights holders will have to be approached for permission before digitised objects can be put on the internet.

With regard to anonymous or **orphan works**, French legislation has found a very practical way to deal with these types of works. It is possible to file a petition with the Tribunal de Grande Instance requesting authorisation to exploit a film. Still, a diligent search should have been performed previously.

Overall the provided results from the survey will be very useful for the drafting of the basic guidelines on copyright clearance and IPR management. Especially because from this report it becomes clear that there are more similarities than differences in the national legal frameworks of the EFG-consortium members.

4. Annex

4.1 Tabular Overview of copyright practices in the EFG consortium countries

Country	Original / Non-Original Work?	How long does copyright last?	Who are the makers of a film?	Who are the heirs?*	Orphan Works
AT	No distinction	70 years from death of maker	<ul style="list-style-type: none"> • main director • screenplay writer • scriptwriter • composer 	1.Children 2. Parents 3. Siblings 4. Grandparents and their children N.B.: spouse receives 1/4 of legal estate	The protection period for films from unknown makers that have never been published is 70 years following the making of the film or publication. Publisher becomes right holder.
CH	No distinction	70 years from death of maker	All artistic contributors to an audiovisual work are rights holders	1.Children & spouse 2. Parents & spouse 4. Further related persons	Institutions such as the Swiss Film Center and Suissimage can track down right holders. Utilisation of orphan works requires authorisation by collecting society, such as Suissimage: only works whose authors are unknown may be used

Country	Original / Non-Original Work?	How long does copyright last?	Who are the makers of a film?	Who are the heirs?*	Orphan Works
CZ	No distinction	70 years from death of maker	<ul style="list-style-type: none"> • director 	Rights are transferred to legal successor through agreements or testaments. If these do not exist, rights pass to the State.	Authorship Protection organizations look up authors, if they do not succeed in this, works may be used freely
DE	A work needs to have authoral creativity for it to be considered a work. So called "Laufbilder" are only protected for 50 years*	70 years from death of maker	<ul style="list-style-type: none"> • main director • screenplay writer • scriptwriter • composer 	<ol style="list-style-type: none"> 1.Children 2. Parents 3. Siblings 4. Grandparents and their children N.B.: spouse receives 1/4 of legal estate or 1/2 if there are no children	The protection period of works whose author is unknown terminates 70 year after the publication of the work. If the work is not published within 70 years of its creation, the copyright expires after that period of time.
DK	No distinction	70 years from death of maker	<ul style="list-style-type: none"> • main director • screenplay writer • scriptwriter • composer 	<ol style="list-style-type: none"> 1.Children & spouse 2. Parents & spouse 4. Further related persons 	There exist no specific rules concerning orphan works.

Country	Original / Non-Original Work?	How long does copyright last?	Who are the makers of a film?	Who are the heirs?*	Orphan Works
EL	No distinction	70 years from death of maker	<ul style="list-style-type: none"> director 	<ol style="list-style-type: none"> Children/ Grandchildren, spouse receives 1/4th of estate Parents/Siblings spouse receives 1/2 of estate Grandparents/ children, spouse 1/3 Great grandparents, spouse 1/2 Spouse inherits all Greek State 	The protection period for films from unknown makers that have never been published is 70 years following or publication.
FR	copyright protection is only given to films that are original and are a creative expression of their author	70 years from death of maker, 100 years in specific case *	<ul style="list-style-type: none"> main director screenplay writer scriptwriter composer author of pre-existing work 	<ol style="list-style-type: none"> Children Spouse (not remarried) All other descendants 	After diligent search the Tribunal de Grande Instance may order an appropriate measure. Claimant may be authorised to exploit a film. It is possible to file a petition with the Tribunal de Grande Instance requesting authorisation to exploit a film.

Country	Original / Non-Original Work?	How long does copyright last?	Who are the makers of a film?	Who are the heirs?*	Orphan Works
HU	No distinction	70 years from death of maker	<ul style="list-style-type: none"> • scriptwriter • composer • any person with creative contribution 	<ol style="list-style-type: none"> 1. Children 2. Grandchildren 3. Spouse 4. Parents 5. Siblings 6. Grandparents 7. Other ancestors 8. Hungarian state 	The protection period for films from unknown makers that have never been published is 70 years following publication. Publisher becomes right holder.
IT	Originality criteria is of importance, live coverage is not protected.*	70 years from death of maker	<ul style="list-style-type: none"> • main director • screenplay writer • scriptwriter • composer 	<ol style="list-style-type: none"> 1. Children & Spouse 2. Parents 3. Siblings& their children 	Whoever has represented, executed or published an anonymous or pseudonymous work is authorized to exercise copyright, until the author reveals him/herself
LT	No distinction	70 years from death of maker	<ul style="list-style-type: none"> • main director • scriptwriter • composer • director of photography • set designer 	<ol style="list-style-type: none"> 1. Children & Spouse 2. Parents 3. Siblings& their children 	The protection period for films from unknown makers that have never been published is 70 years following publication.

**D 5.1 Report on legal frameworks in
EFG consortium member states**



Country	Original / Non-Original Work?	How long does copyright last?	Who are the makers of a film?	Who are the heirs?*	Orphan Works
NL	No distinction, previously this did exist	70 years from death of maker	<ul style="list-style-type: none"> • main director • screenplay writer • scriptwriter • composer 	<ol style="list-style-type: none"> 1. Spouse & children 2. Parents & siblings 3. Grandparents 4. Great Grand Parents (all of 1-4 descendants) 	The protection period for films from unknown makers that have never been published is 70 years following the making of the film or publication.

*= please see report for further information

**= only in the case that this has not been designated in a last will and testament

4.2 EFG PUBLIC DOMAIN QUESTIONNAIRE & GUIDELINES

I	QUESTIONNAIRE
A	Legislation
1	What is the national copyright legislation? When did it/will it come into force? In what situations will this copyright legislation apply?
2	What are the current general rules concerning protection periods under the copyright legislation?
3	What were the general rules concerning protection periods previously? If the protection period has been changed more than once in the past, please list these changes and the transitional rules pertaining to such changes.
4	Are there any current specific rules concerning the protection period of films?
5	What were the general rules concerning the protection period of films previously? If the protection period has been changed (more than once) in the past, please list these changes and the transitional rules pertaining to such changes.
6	If and insofar as the protection period relates to the 'makers' of a film, please provide a list of those who are considered as 'maker' of a film.
7	If and insofar as the protection period relates to the makers of a film and such makers remain unknown following a diligent search, please indicate the general rules which will apply to the protection period.
8	Does any other legislation apply that is relevant to the protection period of films (e.g. copyrights restrictions, military restrictions, law of war, etc.)?
B	Other Rights holders
	Are there any rights holder relating to films whose protection period has expired? For instance: rights relating music, privacy law, portrait rights, neighbouring rights, rights to underlying works (books). Please provide a brief overview of the relevant legislation.
II	INTERPRETATION AND CALCULATION PROTECTION PERIOD
1	Establish whether it follows from the above that certain categories of films, due to

	their nature and provenance, belong at the outset in the public domain.
2	If the protection period relates to the makers then calculate the year that serves as the cut-off date. Indicate if for certain categories of makers there is another protection period as a result of changes to legislation.
3	Investigate which films it involves where the makers died before such date (or several dates where there are different protection durations for various categories of makers).
4	Investigate which films have been made by makers who remain unknown after a diligent search and apply the relevant rules as to protection period.
5	In the absence of these rules reliance can be placed on the EC guidelines governing the use of Orphan Works.
III	DRAFTING GUIDELINES (EXAMPLE)
1	Films in the following categories [...] are in the public domain.
2	Films whose makers died before [...] fall within the public domain.
3	Films whose makers remain unknown after a diligent search fall within the public domain under the following conditions [...].
4	Final check: no other legal or contractual restrictions or other rights holders can prevent or restrict the public films from reproduction / public showing.

4.3 EUROPEAN FILM GATEWAY FILM CLEARING QUESTIONNAIRE

4.3.1 PART I

The basis of this questionnaire is first to establish whether a film is (still) protected under national law and second to identify the rights holder(s) to a film. Furthermore, any additional rights to the film that could be claimed by any third party need to be established. Finally, the general and specific regulations that are applicable to licensing will be explored in the context of collecting societies and publication on the Internet.

ESTABLISHING PROTECTION PERIODS UNDER NATIONAL LAW

A Original / non-original films

1. Was there at any time during the copyright protection of films a distinction made between original and non-original films? If some other distinction relevant to copyright protection applied, please provide a description thereof.

Example: In the Netherlands there was, up to 1972, a maximum protection period of 50 years after publication for non-original films (for original films as from 1931 a protection period of 50 years from the date of the death of the last surviving maker was applicable to films r). This means that non-original films published before 1922 would fall within the public domain (since there was no transitional law). Under the Dutch Copyright Act this conclusion should be withdrawn if it were shown that such films were still protected elsewhere in the EU or EEA as per 1 July 1995.

If the protection period is linked to the natural person / legal entity makers of the film, please answer the following questions (if the rules were at any time changed, then for the relevant questions please provide details of the rules applying before and after such change):

B Natural person makers

1. What rules regarding protection periods apply if the maker(s) is / are known?

Example: In the Netherlands, films produced after 1995 are subject to a protection period of 70 years after the death of the last surviving of the following: the principal director, screenplay writer, dialogue writer and composer of the music created for use in the film. For films produced before 1995 a protection period of 70 years following the death of the last surviving of ALL makers (who have made a creative contribution to the film) is applicable.

2. What rules regarding protection periods apply if the maker(s) is / are unknown or anonymous?

C Protection period with respect to employees / commissions / legal entities as makers

1. What rules regarding protection period apply if the maker was acting as an employee of his employer (also known as work “made for hire” or corporate authorship)?
2. Are there any specific rules that apply if the film was made following a third party commission?
3. What rules regarding protection periods apply if the maker is deemed to be a legal entity (for instance, the production company)?

D Other rules regarding protection periods

If the protection period is not (solely) linked to the natural person / legal entity makers of the film, please answer the following question:

1. Please describe the other rules relevant to the protection period of films.

Example: In certain jurisdictions, copyright law protection was suspended during World War II.

II ESTABLISHING AND IDENTIFYING RIGHTS HOLDERS TO THE FILM

A Rights holders

1. Who is regarded as rights holder to a film? Does national law include a law of ‘assumed transfer’ of rights to the producer? Please provide a summary of the relevant legislation.
(If the legislation has at any time been changed, please indicate who would be considered a rights holder to a film before and after such change).

Example: In the Netherlands, the rights holder to films produced after 1985 is deemed to be the producer. The rights holders to films produced before 1985 are deemed to be ALL makers (unless parties agreed otherwise in contract).

2. Are there any specific rules that are exceptions to the general rules concerning the rights holder to a film?

Example: In certain jurisdictions the rights to certain films vest in the State.

3. Are there any copyright exemptions applicable to cultural institutions such as archives and museums?
4. Are there any other exceptions to copyright laws that apply to film collections of archives and museums?

Example: Are there any works that for whatever reason are not eligible for copyright protection such as works publicised by the State?

B Transfer / Inheritance / Bankruptcy

1. Is it possible to transfer copyright under national law? Please explain the relevant rules.
2. Is it possible to transfer moral rights under national law? What rules concerning moral rights apply if a legal entity or employer is deemed to be the maker or if a work is commissioned? Do moral rights transfer to his next-of-kin in the event of the maker's death? Please explain the relevant rules.
3. What rules apply to the transfer of future forms of exploitation?

Explanation: Are forms of exploitation that do not yet exist at the time of the transfer (e.g. exploitation via internet) included in the transfer? Is it for that matter at all possible to transfer future forms of exploitation under national law?

4. If a natural person is deemed to be the rights holder, please indicate what persons are indicated by law to inherit his rights.
5. What rules apply if a legal entity rights holder has been declared bankrupt (what happens to the rights to a film)?

C Tracking down

1. If a natural person is deemed to be a rights holder, please indicate the sources used to track down such persons.

Example: Is there a public register of wills? Via which national / local organisations or archives can information regarding persons (ancestors, descendants) be obtained?

2. If a legal entity is deemed to be the rights holder, please indicate the sources used to track down such entities.

Example: Is there a public register of legal entities (Chamber of Commerce)? Is there a public register of bankruptcies?

III OTHER RIGHTS

What other rights could any third party potentially claim with regard to the film? What is the protection period for such rights and do these rights transfer to heirs / successors in title (and if so, for what period following the death of the third party / transfer to the legal entity)?

Example: neighbouring rights, music rights, rights pertaining to the underlying work (film based on a book), trademarks, portrait rights / privacy rights.

IV LICENSING

Please indicate which rights holders' collecting societies are required to be involved / consulted in the process of licensing of film collections and the repartition of licensing fees.

V PUBLICATION ON THE INTERNET

Please indicate the general or special rules (legislation and / or case law) that are applicable of publication of copyright-protected works on the Internet.

Example of a general rule: 'what applies offline, also applies online'.

4.3.2 PART II

ORPHAN WORKS

Are there any specific or general rules (legislation and/or case law) regarding 'orphan works' under national law?

An "orphan work" is defined as follows:

A work is "orphan" with respect to rights holders whose permission is required to use it and who can either not be identified, or located based on diligent search on the basis of due diligence guidelines. This search must be both in good faith (subjectively) and reasonable in light of the type of rights holder (objectively).