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**EFG – The European Film Gateway**

# **Final Guidelines on Copyright Clearance and IPR Management**

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## **1. Introduction**

These Final Guidelines have been based on the research for previous Deliverables 5.1 “Report on legal frameworks in European Film Gateway consortium member states” and 5.2 “Basic Guidelines on copyright clearance and IPR management” (Basic Guidelines). Included in these guidelines are copyright theory, practical aspects and decision models. The goal of this document is to provide a tool for the consortium partners to clear the copyright of the works they want to publish online.

In order to get as much feedback as possible on the Basic Guidelines, two copyright workshops were held in Vilnius (October 2009) and Paris (June 2010). Both workshops were organised by EYE Film Institute Netherlands in co-operation with the Deutsches Filminstitut and the Cinémathèque française. The feedback we, the EYE Film Institute Netherlands, have received during this project, has been taken into account for the drafting of this document. Some archives are already using the Basic Guidelines; we have been in contact with them to discuss improvements which were added to the Final Guidelines.

This document serves as a clearing resource and tool for all members of the European Film Gateway Consortium. From the feedback of the members we have gathered that most of the consortium members do not have the resources to allocate legal experts for the task of clearing their collection for online use. To aid the clearing officers without a legal background we have updated and adjusted the theoretical background on copyright from Deliverable 5.2, this has become Chapter 2.

Work package 5 has focused mostly on the clearing of audiovisual works. Chapter 3 deals with the clearing of cinematographic related works, such as posters and photographs, since the EFG portal will also be providing access to film-related materials.

The feedback on the decision models from Deliverable 5.2 was very positive, the models have been updated and improved, and also a complete overview has been made. There are still separate models, partners have expressed that this was preferred to only using a large overview.

A complete overview of the most important aspects of local copyright is given in Chapter 6. All the consortium members who have answered the questionnaires, sent out in 2008, are included in this.

We have aimed to make these Final Guidelines as complete as possible, however we have been faced numerous times with discrepancies in the feedback we received from the local legal experts and the copyright acts. Not in all cases, these discrepancies could be straightened out.

## 2. Copyright Basics

In this chapter the basic notions of copyright are explained, these have been incorporated in all of the copyright acts of the EFG consortium members. This chapter forms an introduction to copyright; it is essential for any clearing officer to understand the concepts which are explained in the following text. Copyright protects literary works and works of art upon their creation.<sup>1</sup> This protection also applies to audiovisual works (hereinafter the word “work” and cinematographic work will be used as synonyms). No formal registration of any kind is needed to obtain copyright. In general, in most of the consortium member’s countries a work is protected by copyright for 70 years after the death of the author.

### 2.1 Exploitation Rights and Moral Rights

Copyright entitles the right holder exclusively to distribute, reproduce (make copies of the work) and in other ways make use of his work. The author attains copyright upon the creation of the work and is therefore the initial right holder. However, rights may be assigned to third parties. Making a work available to the public requires consent of the right holder: the traditional theatrical showing of a work but also making an audiovisual work available online are a few examples. Other exploitation rights are the right to authorise:

- translations of the work
- public performance or broadcast, and the communication of broadcasts and public performances
- arrangements or other types of adaptation to the work

Besides these “exploitation rights” copyright also consists of “moral rights”. These moral rights are closely linked to the author and are – other than exploitation rights – inalienable. Moral rights include:

- The right of attribution: the right of the author to be acknowledged and credited
- The right of the author to have a work published anonymously or under a pseudonym
- The right to the integrity of the work: protects the work from alteration, distortion without the consent of the author.

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<sup>1</sup> For a more detailed list on what exactly are literary works and works of art you can also consult article 2 of the Berne Convention, which will be discussed in more detail in another part of this document.

## 2.2 Orphan Works

If the rights holder cannot be identified or is untraceable, a user is unable to request permission from the right holder. For these so-called “orphan works”, often it may also be impossible to determine when exactly a work was created and/or published for the first time. This is a practical problem for which very often the law does not provide an adequate solution.<sup>2</sup> In addition, in the various countries of the consortium members, orphan works are treated in different ways.<sup>3</sup> With regard to audiovisual orphan works the following definition applies:

*“An audiovisual work is defined as “orphan” only when the copyright owner/right holder(s) either cannot be identified at all or when his name is known but he cannot be located in order to obtain authorisation. As such, an “orphan audiovisual work” is defined as a work the copyright owner/right holders of which cannot be identified after a diligent search using generally accepted search methods and tools. Even if the copyright owner/right holders can be identified, the work will still qualify as orphan if the identified copyright owner/right holders cannot be located after a similarly diligent good faith search”.*<sup>4</sup>

After a diligent search, a work can be classified as an orphan work. Criteria for such a search can be found in chapter 4.

The HLEG Subgroup Copyright<sup>5</sup> developed a set of Key Principles for Databases and Rights Clearance Centres for Orphan Works as well as for Out-of-Print Works. To clarify whether a presumed orphan work really is an orphan is to undertake and be able to prove a diligent, reasonable search for the copyright owner. Sector specific work groups were set up defining the criteria for such a search.<sup>6</sup> The guidelines developed by the Copyright Subgroup are also applied in this document.

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<sup>2</sup> Noticeable initiatives have been taken in France and Switzerland. The French legislator has given the Tribunal de Grande Instance the ability of permitting the use of an orphan work. After a 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.

<sup>3</sup> See Annex 1 Tabular Overview Countries D 5.3

<sup>4</sup> This definition is stated in the [“Sector-specific guidelines on due diligence criteria for orphan works”](#)

<sup>5</sup> In 2006, the European Commission set up a High Level Expert Group on Digital Libraries which consisted of representatives from cultural institutions, publishers, technology firms and academics. The HLEG's main objective was to build consensus between the different actors that are impacted by the Digital Libraries Initiative.

<sup>6</sup> The guidelines for the AV sector are available under:

[http://ec.europa.eu/information\\_society/activities/digital\\_libraries/doc/hleg/orphan/appendix.pdf](http://ec.europa.eu/information_society/activities/digital_libraries/doc/hleg/orphan/appendix.pdf)

### **2.2.1 Using Orphan Works Online**

If after a diligent search, the rights holder cannot be identified or located, the work may be used online with a disclaimer such as:

*“We have made every effort to obtain permission of all the right holders of this cinematographic work. If you claim to be a right holder to this work please contact [add e-mail address to which these requests can be sent]”*

In case legitimate claims of a rights holder are brought to the attention of the archive, the rights holder will have to approve the use of the work. Please note, that a disclaimer will not hold the user harmless from any claims the right owner may come forth with. A disclaimer will however be of relevance to show that the user has done everything in its power to find the rights holder. When using such a disclaimer, please make sure the point of contact (for example the e-mail-address) is in use in your organisation. There must be someone dedicated to dealing with claims of possible right holders.

### **2.3 Audiovisual Works & Copyright**

According to the Berne Convention<sup>7</sup> cinematographic works are considered to be an “artistic work” and are therefore protected by copyright. The Berne Convention is the leading international convention on copyright to which 164 countries are member states. This Convention was the first legal instrument to deal with cinematographic works, which were included in 1908. Since a cinematographic or audiovisual work has many contributors, certain legislations have decided to limit the amount of authors, whilst others simply consider any creative contributor an author.

In the European Union copyright has only been partly harmonised. According to Directive 2006/116/EC “on the term of protection of copyright” protection will expire 70 years after the death of the following persons (whether or not they are designated as co-authors):

- Author of the screenplay
- Author of the dialogue
- Author of music specifically created for use in the audiovisual work
- Principal Director

The principal director is the initial rights holder, while the member states are free to designate other co-authors. Rights may be assigned via contract. Some legal frameworks<sup>8</sup>

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<sup>7</sup> See article 2 Berne Convention. The full title is the Berne Convention for the Protection of Literary and Artistic Works. It was first adopted in 1886 as an agreement to honour the rights of all authors who are nationals of countries that are party to the convention. The current version of the convention is the Paris Act of 1971. The convention is administered by the World Intellectual Property Organization, (WIPO). The majority of world is a member of this convention.

<sup>8</sup> See Annex “Tabular overview of copyright practices in the EFG consortium countries-extended” for more information on local regulations

have a legal assumption of rights transfer in audiovisual works to producers. In some cases, the authors themselves decide to transfer their rights to another person.

## **2.4 Future Forms of Exploitation**

When clearing rights for a work, it should be checked whether or not the rights to future forms of exploitation have been transferred to a third party. Of course this is only an issue if a third party has acquired the exploitation rights to a work, such as the producer. Technology has progressed in such a way that very often this could not have been envisaged by lawmakers, authors and producers. Contracts which were concluded in, for example, the 1960's could not have mentioned the various forms of exploitation (online, DVD) which exist nowadays. Whether a producer holds the exploitation rights also to future forms of exploitation depends on the wording of the contract.

Legislators have dealt with this issue in a variety of approaches. In the Czech Republic forms of exploitation that did not exist at the time of transfer are explicitly excluded from licensing or transfer.<sup>9</sup> In Germany an automatic transfer of rights for unknown future forms of exploitation was only possible in the period of 1966-2008.<sup>10</sup> In Denmark, on the other hand, a transfer of future forms of exploitation has to be explicitly mentioned in the contract.

For the European Film Gateway partners this entails that in order to obtain permission to use their collection online, it is quite possible they will have to contact both the producer and the rights holders. It is also important to take into account that legislation varies regarding this subject, so local legislation should be consulted.<sup>11</sup>

## **2.5 Prior to Using a Work**

Whenever someone wants to make use of an artistic work the following questions should be asked:

### **2.5.1 Is the Work Still Protected by Copyright?**

In 1993, the Directive "Harmonising the Term of Protection of Copyright and Certain Related Rights"<sup>12</sup> was introduced in the European Union. This Directive has set the duration of copyright and related rights to: life of the author(s) plus 70 years for most copyright works, and 50 years from execution, fixation or publication for performers' and producers' rights.

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<sup>9</sup> Art.64 Law No. 12/2000 Coll. of 7 April 2000 on Copyright, Rights related to copyright and on the amendment of certain laws

<sup>10</sup> Art 137I UhrG

<sup>11</sup> Annex 1 Tabular Overview Countries D 5.3 and Chapter 6 Copyright Essentials

<sup>12</sup> Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights

These are also known as neighbouring rights. The Directive has been updated on various occasions. Actors and performers have rights to their performance (neighbouring rights), and therefore will also have to give permission for the publication of a work. In general the neighbouring rights are assigned to the producer, in order to make the exploitation of the work less complicated. The producer often also has a neighbouring right in the work, this lasts for 50 years after the first fixation/publication of the audio-visual work. The neighbouring right of the producer consists of the ability to authorize or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of a work.<sup>13</sup>

Often an audiovisual work may be based on an underlying work, such as a play or a novel. The author of the underlying work will have to give permission for the adaptation of his work and also for the publication of the work.

Implementation of the Directive in national legislation had to be finalised in all EU Member States by 1 July 1995. All films that were created in the EU and were still protected on this date in any Member State fall under the new protection period. In general one can say that all works whose author has not been deceased for 70 years on that date will fall under the new protection period (even if according to previous legislation the work would have become part of the public domain).<sup>14</sup>

As mentioned before, copyright, in general, lasts for 70 years after the death of the author. After this time has passed a work becomes part of the “Public Domain”. When a work is in the public domain it means there is no restriction from an intellectual property perspective to use the original work, however translations and other interpretations of the work might gain a copyright of their own. Contrary to what some archives believe, making a restoration of a work does not give you a new copyright to the work. Physical ownership of a copy is not the same as having copyright to a work. If a work still is protected by copyright:

*Æ To check whether a work is still within copyright protection, it has to be determined where the film was made to apply the correct legislation on copyright and copyright periods, **See Schedule Ia and Ib.***

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<sup>13</sup> Article 2a of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society

<sup>14</sup> Noticeable exception would be Spain; the protection period was 80 years before the implementation of the EU-directive. A good explanation on the reasoning behind revived protection can be found in this article: [http://www.pgeller.com/Geller-EC\\_Copyright\\_Term.htm](http://www.pgeller.com/Geller-EC_Copyright_Term.htm)

### **2.5.2 Does the Intended Use Require Permission of the Copyright Holder?**

Publication and reproduction are rights which initially belong to the rights holder. Offering an audiovisual work online constitutes a publication; so before this can be done the archive should ask the permission of the rights holder. In some cases there may be a specific legal exception applicable, internal use (such as intranet, or viewing on the premises of an archive) is allowed in some legislation without permission, strictly for preservation or research purposes.<sup>15</sup> The wording of these exceptions varies from legislation to legislation, some are broadly defined, whilst others are very strict and whether they allow online disclosure is very unlikely. Due to this legal uncertainty a large part of the European film heritage cannot be disclosed online.<sup>16</sup>

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<sup>15</sup> Annex 1 Tabular Overview Countries D 5.3 and Chapter 6 Copyright Essentials

<sup>16</sup> The ACE has also commented on these European legal discrepancies in [http://circa.europa.eu/Public/irc/markt/markt\\_consultations/library?l=/copyright\\_neighbouring/consultati\\_on\\_copyright/ace-association/\\_EN\\_1.0\\_&a=d](http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/copyright_neighbouring/consultati_on_copyright/ace-association/_EN_1.0_&a=d)

### 3. Clearing the Rights for Cinematographic Related Works

The EFG consortium partners have collections which do not only consist of cinematographic works, but also of film-related material like for example:

- Film Stills
- Posters
- Photos (set, portraits)
- Books / Periodicals

#### 3.1 Stills

Whether or not a separate copyright exist on stills of cinematographic works is highly questionable. They are parts of the film, and do not seem to have the level of originality which is needed for a work to attain its own copyright. Therefore, the copyright of the cinematographic works should apply to the still as well. The rights holders of the cinematographic work are also the right holders of the stills. The situation is different when it comes to set or portrait photos, which is briefly discussed hereunder.

#### 3.2 Posters, Photos (Set and Portrait)

In the Netherlands, over 2, 9 million photographs are being digitised in the framework of the “Images for the Future” project<sup>17</sup>. This is a joint effort of a number of institutions to which EYE Film Institute Netherlands is also contributing parts of their collection. Clearing these works one by one is not an option time and personnel-wise, especially since often the photographers and therefore possible rights holders are unknown. In order to clear the rights of this large amount of works, the partners of the “Images for the Future” project have entered into negotiations with Collective Rights Management organisations which represent rights holders. However, Dutch CRM-organisations cannot give a license for orphan works and rights holders which are not members of the CRM’s, but they have monetary resources to compensate rights holders who might claim compensation for online use. EYE are trying to reach an agreement with CRM-organisations where they give permission to use works on

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<sup>17</sup> Images for the Future of was initiated in 2007 and will run for a period of seven years, the FES (Fund for the reinforcement of Economic Structure) is providing a budget of 154 million Euros for the digitization of the Netherlands’ audiovisual memory. With it, the imminent threat of decay and loss of vulnerable films and video- and audiotapes is being taken away. During the project, a total of 137.200 hours of video, 22.510 hours of film, 123.900 hours of audio, and 2.9 million photos will be restored, preserved, digitized, and disclosed through various services.

The main goal of the project is realising maximum accessibility to the audiovisual material for the targeted user groups (educational institutions, the general public, and the creative sector). To reach this goal, Images for the Future is developing and offering innovative services and applications. Partners in this project are EYE, Sound and Vision, National Archive, Centrale Discotheek Rotterdam, Association of Public Libraries and KnowledgeLand Foundation.

behalf of their members. The negotiations are time-consuming and the outcome may be expensive. For the EFG consortium partners it is advisable to contact local CRM-organisations and start negotiations for clearing of large bulks of works. Archives can also notify the government on these kinds of negotiations.

## 4. Diligent Search Guidelines for Rights Holders

From various meetings and received feedback it came forth that EFG consortium members are finding it difficult to perform the complex search for right holders. This chapter was already included in Deliverable 5.2, for D5.3 it has been revised and added again in order to bring it to the attention of the partners.

The following steps should be taken to collect the necessary information regarding rights holders in order to follow the decision model and ultimately, to ask consent from the rights holder(s). The search should be executed by a professional (preferably historian), who is educated and experienced in the field of genealogical research. You may want to consider involving volunteers from genealogical communities.

*Please note that you should keep a record including dates and names of all your research activities, which may vary from database search, web search to any contact with entities or persons, whether the search activity was successful or not. According to the European Commission 'Guidelines on Due-Diligence Search Criteria for Orphan Works' it is required to document all research steps.*

### 4.1 Search for Persons (Ancestors)

Finding the filmmakers and right holders of early cinema (the period between 1910-1940) might be troublesome. Here are some do's and don'ts.

#### **Step 1: Collect What You Already Know About the Subject of Your Research**

This phase of the research provides us with all the information that can be known of a particular film: production company, director and crew, biographical data of the filmmakers, etcetera. Be especially keen on 'hard data' (date of birth, date of death, names of spouses and children, places of residence, etcetera). After this internal search make use of external sources of the world wide web such as [IMDB](#), [BFI](#), [DFI](#), etc.

The following selection of websites provides reliable film-specific information:

- [Registre public de la Cinématographie et de l'Audiovisuel by Centre National de la](#)
- [Cinématographie](#) (Centre National de la Cinématographie)
- [The Internet Movie Database](#)
- [Genlias](#) (portal for local civil register offices, NL)
- [British Film Institute](#)
- [www.filmportal.de](#)
- [Gaumont Pathé Internet Database](#)

- [The Complete Index to World Film](#)
- [Lexicon des Internationalen Films](#)
- [Variety](#)
- [www.film-dienst.de](#) and [www.funkkorrespondenz.de](#) and [www.cinomat.de](#) (Germany Film-Dienst online Services)
- [www.filmrommet.no](#) (on Norwegian cinematography)

Other audiovisual archives and Collective Rights Management organisations are also sources of valuable information. For National Film Archives see [www.fiafnet.org](#) (International Federation of Film Archives) and for the National Collective Rights Management organizations of the EFG consortium please see the Copyright Essentials section of this deliverable which can be found in chapter 6.

Example: Copyright Registration Office: <http://www.copyright.gov/> (USA)

#### **4.2 Search for Legal Entities (such as production companies)**

If you search for legal entities contacting Chambers of Commerce is considered to be helpful. Examples are:

- [Handels-, Genossenschafts- und Partnerschaftsregister](#) (GER)
- [Handelsregister- und Firmendaten](#) (SWI)
- [Handelsregister](#) (list of Chambers of Commerce outside Europe)

Publishing companies can be a good source, if you look for the rights holder of an underlying work in case the film is based on a book.

#### **Step 2: Find Out If the Job Has Been Done Already**

The ultimate goal of your research is to find rights holders. This means that you have to look for filmmakers, their children or even their grandchildren to establish who the rights holders are. The internet provides a wide range of genealogical societies, newsgroups, and portals which may have the information that you need. Especially in the USA family history is big business, provided by pay services such as [ancestry.com](#). In the Netherlands we have [genealogie on line](#), a virtual community of genealogists who exchange the fruits of their researches and help each other whenever they can. Other important sources are [geneanet](#) and the database of [The Church of Jesus Christ of Latter-day Saints](#). The Mormons collect as part of their religion genealogical data all over the world. Besides these communities more and more people use the world wide web to expose their personal interest and hobbies. With some luck a nephew or grandchild of a filmmaker is an enthusiastic

genealogist. If this is the case, the results of their family history are often shared on a webpage. At EYE, we found a lot of right holders with the help of these ‘family pages’.

### **Step 3: Consult Online Archives**

Archives discover more and more the benefits of the world wide web for their services. They provide their customers with data online, such as copies of birth certificates, notaries’ documents, places of residence, etcetera. In the Netherlands the co-operation between the national, provincial and local archives – always a delicate matter – has approved a lot in recent years, which culminated in [genlias](#). This database combines several local register offices (‘burgerlijke stand’) of the country. When consulting these portals is fruitless, you can try to find some data in local archives which are online. The local archive of [Amsterdam](#) provides its visitors with so called ‘[archieffkaarten](#)’, charts that collect all the information that is known of a citizen or former citizen, such as names of their children and dates of birth. Newspapers are a great source because of their family announcements. In the Netherlands the Central Office of Genealogy (‘[Centraal Bureau voor de Genealogie](#)’) has collected these articles for over a century. After registration (it’s free), you can consult the database of the CBG on line. The [National Archives](#) in The Hague build [a portal](#) for some historical important Dutch newspapers. Other great sources are the National Archives of the [UK](#) and [USA](#), which are both a joy for those among us who ‘breath’ history. Another school example of an excellent virtual archive is the migration sources of [Ellis Island](#). For your French investigation you need to consult the local registration offices of the country, the so called [etat civils](#).

#### Examples of online National Archives

- [National Archives UK](#) (UK)
- [National Archives USA](#) (USA)
- [Ellis Island Immigration Records](#) (USA)
- [La guide pratique de la généalogie](#) (FRA)
- [Genlias](#) (portal for local civil register offices, NL)
- [Genlias](#) (Central Office of Genealogy, NL)
- [Nationaal Archief](#) (NL)

#### Examples of online Newspapers (Archives)

[New York Times](#) and [Newspaper Archives USA](#) (USA)

[Die Zeit](#) and [Pressearchive der Zeitungen und Zeitschriften](#) (GER)

#### **Step 4: Visit Local Archives**

When steps 1 to step 3 did not provide you with the information you were looking for you have to go outside to make your research successful. Online archives are a powerful source but most of the materials are still in dusty boxes stored in local archives and museums. You have to visit them in person. Mind that not all sources are publicly available. Dutch law has strict guidelines on which sources are public and which are not. For example, a birth certificate is only available when the date of birth is 100 years or more in the past or when you have proof that the person you are looking for is deceased.

#### **Step 5: Get In Touch**

When you followed step 1 to step 4 you must have collected some clues in your research. (If not, you may consider giving up. Sometimes a person is really lost in history...) If you have loose ends and questions you might consider to contact people by e-mail, phone or a good old fashioned letter. In one of our researches we were looking for the rights holder(s) of a Swiss filmmaker who worked in the Netherlands after World War II. In the local archives of the city of Amsterdam we found some similar last names that could be his children (it was not a common name). Because of his cinematography we knew that the filmmaker returned to Switzerland in the late fifties. On the website of a local rotary club nearby Zurich we found someone that could be related to our filmmaker. We requested the web master of the rotary club to forward our e-mail to him. He responded in less than two days that he was indeed the son of the filmmaker we were looking for. He provided us with a short biography of his father and lots of information we did not yet know.

#### **Tips & Tricks**

1. Structure your data with the use of genealogical software. We make use of [Aldfaer](#), a Dutch program that is freeware. It is similar to [Family Tree Builder](#), which is also freeware. Both programmes do what they have to do: they connect parents with children, and spouses with spouses. You can link your documents, such as birth certificates, photos, and family announcements with the subject of your research.
2. Make a file of your research. Describe not only the steps you took that provide you with data, but also the steps that were unsuccessful so that you don't take them ever again. Even when a research did not provide you with the information that you were looking for the file gives you a reflection on the effort you made to find right holders. When it comes to a legal matter you can at least prove that you did your best to find right holder(s) and respect their copyrights.

### **Step 6: If the Rights Holder Cannot Be Found**

After a diligent search without a positive result, a work can be classified as an orphan work. Criteria for a diligent search<sup>18</sup> are the following.

Locating of right holders should be done:

- prior to use of work
- title per title or work per work
- With resources preferably from the country of origin

In order to find rights holders an announcement should be published with a description and image of the work, this can be done:

- On a website
- In a relevant publication
- Newsletter
- Local or national press

The search process should be documented:

- Date of the searches
- Names of the resources used and list of search terms employed
- Copies/print-outs of announcements of diligent search for rights holders where relevant

After this search the orphan work may be used with disclaimer, see also section 2.2 of these guidelines.

### **Step 7: Obtaining Permission**

Keep in mind that obtaining copyright permission from a copyright holder will most likely be a lengthy and time-consuming process. Your permission request should at least contain:

- a. Your name, address, telephone number and e-mail address
- b. Your title, position and the institution's name
- c. The date of your request
- d. The title of the work you want to use with a description and citation of that work
- e. A description of how the work is to be used, by whom and for how long

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<sup>18</sup> These guidelines are described in greater detail in the report of the European digital libraries initiative "[Sector-specific guidelines on due diligence criteria for orphan works](#)" from the 4th of June 2008

- f. A signature line for the copyright holder to sign, signifying that permission has been granted

In Annex 2 an example of a License Agreement is provided.

## 5. The Decision Models

We strongly advise the following steps to be followed by either an in-house-legal-counsel or a person in your organisation who has sufficient legal knowledge. It is always useful to check whether you archive has any written agreements with rights holders concerning the works you would like to use. Please consult your internal administration prior to the rights clearing process.

Prior to starting the decision models please gather the following data, which you will be using in the following decision models:

- a. When was the film produced and published?
- b. Where was the film produced?
- c. Who created the film? (Who are mentioned in the credits, author of screenplay, dialogue, music and principal director and find out their date of death)
- d. Who is the producer and production company?

In order to determine the rights status of a work, and which steps should be taken to clear a work, the following decision models should be followed. Previous versions of these decision models were part of Deliverable 5.1; they have been updated and enhanced for this document.

I a Country of origin?

*To be able to clear the rights of a work it first has to be determined which legislation should apply. Determining where an audiovisual work was produced is key in this effort.*

I b Copyright terms for films made in the U.S.A.

*The copyright system in the US differs from the European copyright (author's law or droit d'auteur).*

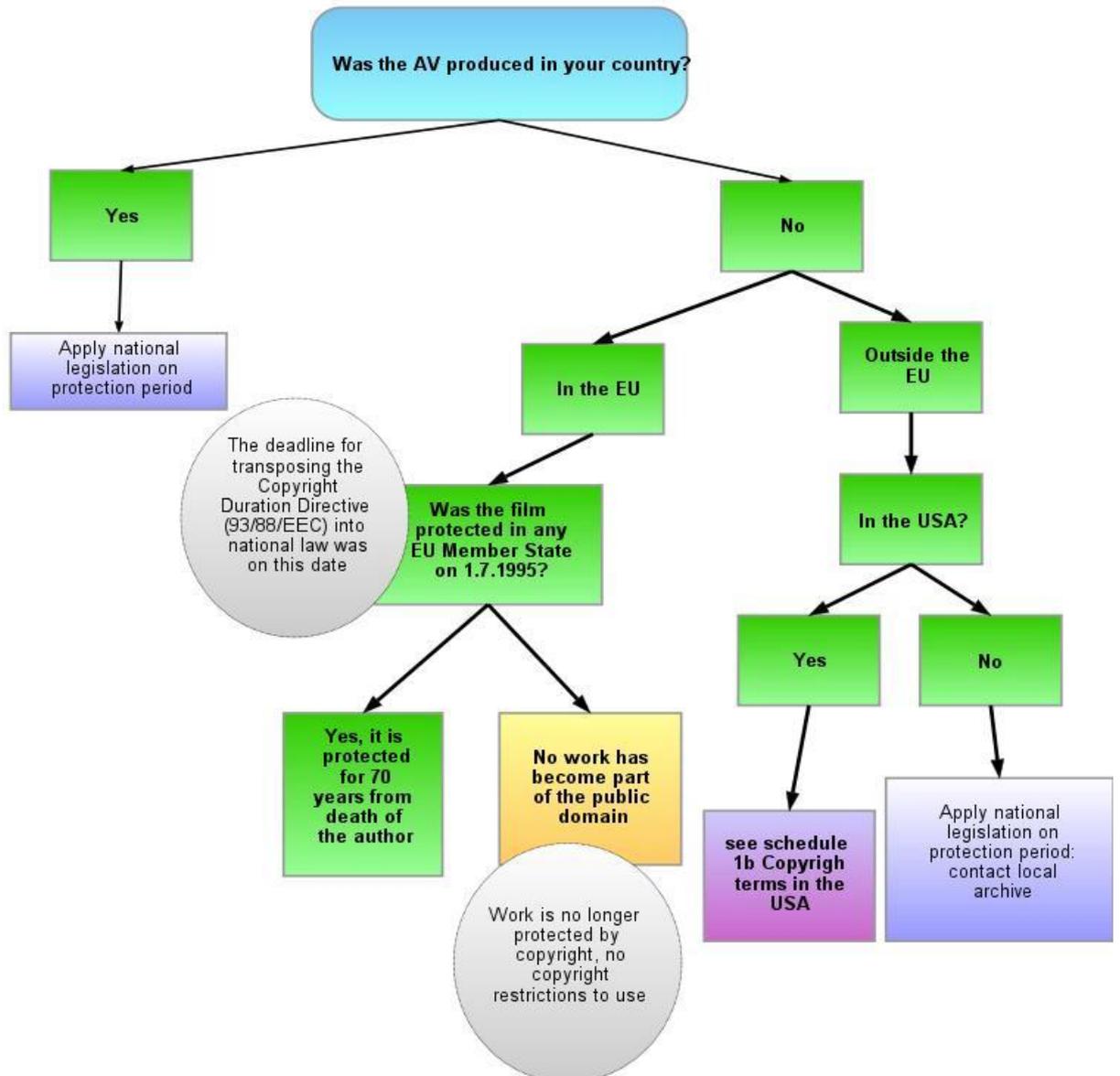
II Is the work still protected?

*Permission may not be needed if the work is no longer protected and has therefore become part of the public domain.*

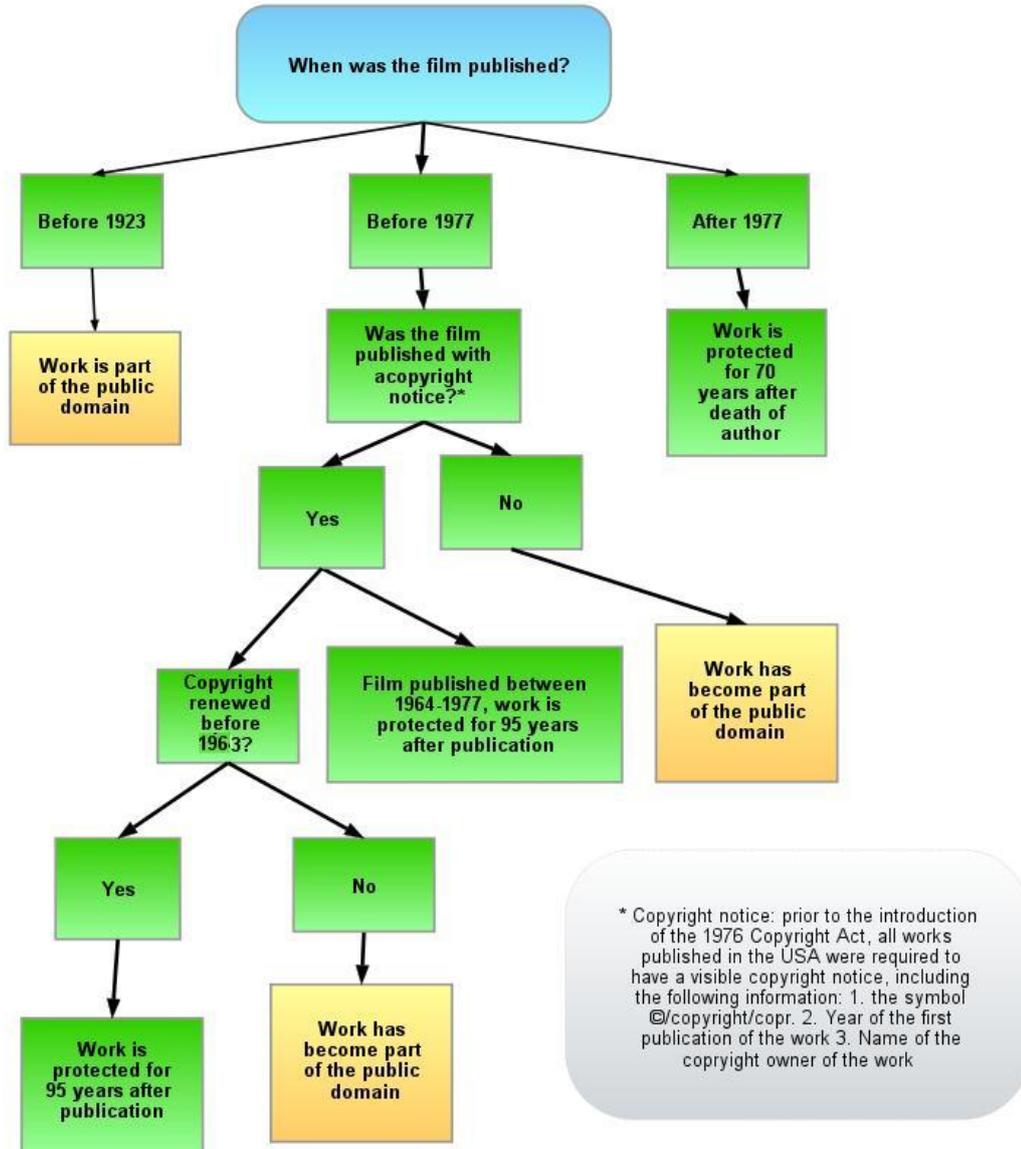
III Who are the rights holders?

*To be able to ask permission for use, it has to be determined who the right holders are and whether they still are alive. Remember that in addition to requesting the copyright holders for permission, the producer also has the right to oppose publication. The producer's neighbouring right lasts for 50 years from date of publication of the film.*

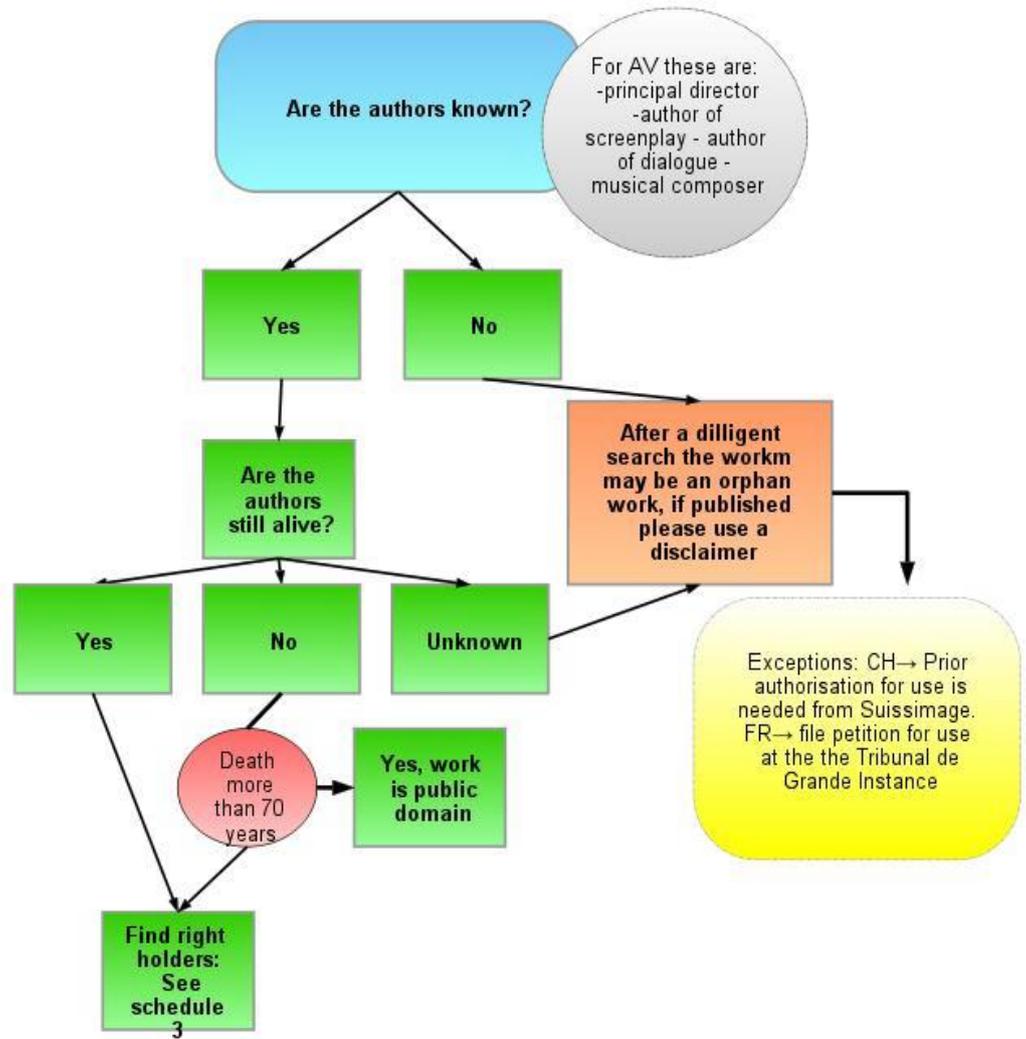
Schedule 1 a :Country of origin



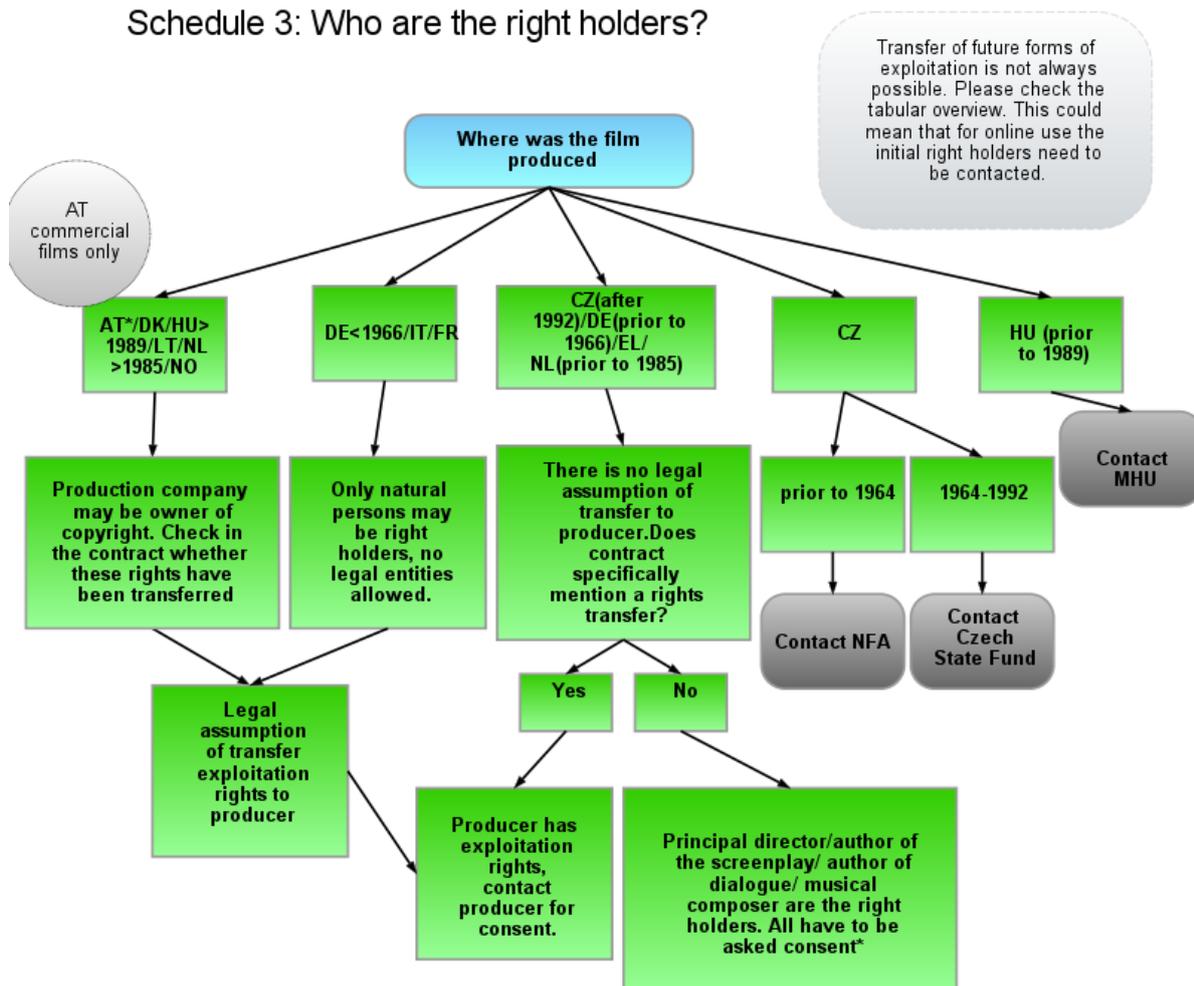
Schedule 1 b: Copyright terms for cinematographic works made in the USA



## Schedule 2: Is the work still protected?



### Schedule 3: Who are the right holders?



Transfer of future forms of exploitation is not always possible. Please check the tabular overview. This could mean that for online use the initial right holders need to be contacted.

\* the Principal director is all countries the right s holder to a work, the author of the screenplay/ author of dialogue/ musical composer have in most European copyright legislation been designated as co-authors. Please check Annex 1 for more details. Exploitation rights may have been transferred to third parties via contract, please check the contract whether this is the case. The owner of the exploitation rights must be asked for consent.

## Clearing a work



## 6. Copyright Essentials

In this chapter an abbreviated overview is given of the copyright legislation of 13 out of 14 countries that are represented in the EFG consortium. The feedback which was received for Deliverable 5.1 was used, checked and updated to write this chapter.

Information on the following topics is provided for the different countries in the following sub-chapters:

- a. Copyright Law
- b. Right Holder
- c. Transfer of rights
- d. Future rights
- e. Orphan works
- f. Collective Rights Management Organisations

These subjects are all of importance when following the decision models and give background information to these models.

### 6.1 Copyright Essentials: Austria

#### **6.1.1 Copyright Law**

The latest amendment made to the "[Urheberrechtsgesetz](#)" was in 2006. Article 4 of the act holds the definition of a cinematographic work and Chapter 4 is dedicated to specific rules for these works.

#### **6.1.2 Rights Holder**

The exploitation rights of commercial films belong to the owner of the film company (producer of the film).<sup>19</sup> The producer should be contacted for permission for any use of the cinematographic work.

#### **6.1.3 Transfer of Rights**

Transfer of copyright is limited; limitations are codified in article 23 of the Copyright Act. The author may authorize others to exploit the work; this can be done via licensing. Moral rights cannot be assigned. Inheritance is the only way in which copyright may be transferred. The order of inheritance:

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<sup>19</sup> See art 38 of the Austrian Copyright Law

- (1) Children
- (2) Parents
- (3) Siblings
- (4) Grandparents and their children
- (5) The State

#### **6.1.4 Future Rights**

Future forms of exploitation have to be specifically mentioned in the contract in order to have been transferred adequately.<sup>20</sup>

#### **6.1.5 Orphan Works**

The Copyright Act contains no provisions on orphan works. If you encounter a possible orphan work, please perform a diligent search and make a risk-assessment prior to using an orphan work. See also Chapter 4.

#### **6.1.6 Collective Rights Management Organisations**

- **KommAustria** - appointed in 2006 as the supervisory authority for all Austrian Collective Rights Management Organisations:  
<http://www.rtr.at/en/rtr/OrganeKommAustria>
- **VDFS** – collecting society for the audiovisual sector: [www.vdfs.at](http://www.vdfs.at)

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<sup>20</sup> See art 21 of the Austrian Copyright Law

## 6.2 Copyright Essentials: Czech Republic

### 6.2.1 Copyright Law

The Czech [Copyright Act](#) came into force in 2000. A section of this act is dedicated to audiovisual works; articles 62 to 64.

### 6.2.2 Rights Holder

The author of the audiovisual work is the director of the work.<sup>21</sup> In case the director grants the producer a written permission to make the first fixation of the work, this shall mean that the producer has an exclusive and unrestricted license:

- to make copies of the work for distribution, and distribute these copies
- communicate the work to the public<sup>22</sup> (publish, show)
- to make translations of the work
- to sublicense these forms of use to a third party

The director, as the author of the work, is the initial right holder and should therefore be contacted first if a work is copyright protected. The previous does not apply to films which were created prior to the creation of the Czech Republic in 1992. For films which were created before 1964, the NFA (Národní filmový archiv) has to be contacted. The Czech State Fund has to be contacted for films from the period 1964-1992.

### 6.2.3 Transfer of Rights

According to the Czech Copyright Act moral<sup>23</sup> and economic<sup>24</sup> rights cannot be transferred. A license of use may be given by the author, as is specifically mentioned in the earlier mentioned provision on audiovisual works.

In case of the death of the rights holder, rights are inherited through agreements or testaments, if these do not exist, the rights will pass to the State.

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<sup>21</sup> Art. 63 sub 1 Law No. 12/2000 Coll. of 7 April 2000 on Copyright, Rights related to copyright and on the amendment of certain laws

<sup>22</sup> Art. 18 Law No. 12/2000 Coll. of 7 April 2000 on Copyright, Rights related to copyright and on the amendment of certain laws

<sup>23</sup> Art. 11, sub 4 Law No. 12/2000 Coll. of 7 April 2000 on Copyright, Rights related to copyright and on the amendment of certain laws

<sup>24</sup> Art. 26, sub 1 Law No. 12/2000 Coll. of 7 April 2000 on Copyright, Rights related to copyright and on the amendment of certain laws

#### **6.2.4 Future Rights**

Rights to use the work in a manner which is not known at the time the license was given cannot be transferred at all.<sup>25</sup> For each new form of use, the author needs to give a license.

#### **6.2.5 Orphan Works**

There are no provisions on orphan works in the Copyright Act. However, the act is currently under revision and will include a section which will deal with orphan works.<sup>26</sup>

#### **6.2.6 Collective Rights Management Organisations**

- **Dilia** – agency for dramatic and literary works: [www.dilia.cz](http://www.dilia.cz)
- **Intergram** – independent society/corporation/association for practising artists and producers of audio and audiovisual recordings: [www.intergram.cz](http://www.intergram.cz)
- **OOA-S, Ochranná organizace autorská** (authors' protective rights organisation) – authors' association of authors of artworks, architecture and the visual components of audiovisual works: [www.ooas.cz](http://www.ooas.cz)
- **GESTOR ochranný svaz autorský** – (authors' protective rights society) – collective administrator of copyright law for royalty fees from sales and re/sales of original artworks [www.gestor.cz](http://www.gestor.cz)

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<sup>25</sup> Art.64 Law No. 12/2000 Coll. of 7 April 2000 on Copyright, Rights related to copyright and on the amendment of certain laws

<sup>26</sup> According to Petr Heinzl from the OOA-S, collective rights management organization, in an e-mail from 23<sup>rd</sup> of June 2010

## **6.3 Copyright Essentials: Denmark**

### **6.3.1 Copyright Law**

The latest Danish [Copyright Act](#) is of 2010, the last major revision was in 1995.

### **6.3.2 Rights Holder**

A legal assumption of transfer of the exploitation rights to the producer exists in Danish copyright law. Article 58 of the Act limits the rights the producer acquires, it does not apply to: existing works, scripts, dialogues and musical works created for the film.

Also, there is no legal assumption of rights transfer from the director to the producer. In general, in order to use the work both the producer and the director should be contacted. This legal assumption was introduced in 1995 and has retro-active effect.

### **6.3.3 Transfer of Rights**

Only exploitation rights may be transferred. Moral rights and exploitation rights are passed on to the heirs after the death of the author. The order of inheritance is the following:

- (1) Children and spouse
- (2) Parents
- (3) Other related persons

### **6.3.4 Future Rights**

If it is explicitly stated in the agreement that it covers both known and unknown forms of exploitation the user will normally have the right to new forms of exploitation. If, however, the agreement does not explicitly mention this, 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.

### **Extended Collective Licensing**

In 2008 the “extended collective license agreement” was included. This system entails that under certain circumstances an extension effect is given to clauses in a collective agreement. It applies to right holders who are not members of the contracting organization. These license agreements introduce 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.

### **6.3.5 Orphan Works**

There are no specific rules; film cannot be used without the permission of the right holders.

### **6.3.6 Collective Rights Management Organisations**

- **Copydan** – society under which other Collective Rights Management Organisations fall: [www.copydan.dk](http://www.copydan.dk)
- **NCB** – use of music in audiovisual productions, films etc:  
<http://www.ncb.dk/english/index.html>

## 6.4 Copyright Essentials: France

### 6.4.1 Copyright Law

Copyright has been codified in France in the “[Code de la propriété intellectuelle](#)”.

### 6.4.2 Rights Holder

There is a legal assumption that the exploitation rights of the audiovisual work have been transferred to the producer.<sup>27</sup> Contracts can however have provisions which prevent such a transfer, the legal presumption does not prevail if this is the case. The producer should be contacted for use of the audiovisual work.

### 6.4.3 Transfer of Rights

Right Holders are able to assign their exploitation rights via a written agreement. The contract has to explicitly mention what aspects of the exploitation right are assigned:

- Scope
- Purpose
- Place
- Duration<sup>28</sup>

A general term such as “including all the rights” is not enforceable. Moral rights are inalienable. However, they are perpetual and may be bequeathed to the author’s heirs.<sup>29</sup> The order of inheritance is as follows:

- (1) Children
- (2) Spouse<sup>30</sup>

### 6.4.4 Future Rights

Any assignment of exploitation of a work in any manner which is unforeseeable on the date of conclusion of the contract has to be explicitly mentioned and shall stipulate remuneration for the unforeseen exploitation.<sup>31</sup>

### 6.4.5 Orphan Works

After a 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 interest in bringing the action. Burden of proof of diligent search and non-

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<sup>27</sup> See Article L 132-24

<sup>28</sup> See Article L 131-3

<sup>29</sup> See Article L 121-1

<sup>30</sup> See Article L 121-2

<sup>31</sup> See Article L 131-6

existence of successors is with petitioner. Also the Minister of Culture may take this action. These proceedings can bring forth a court-appointed agent. An appropriate measure may be that the film may be published.

#### **6.4.5 Collective Rights Management Organisations**

- **SACEM** - music composers: [www.sacem.fr](http://www.sacem.fr)
- **SACD** – composers of dramatico-musical works: [www.sacd.fr](http://www.sacd.fr)
- **Spedadam** – performing artists: [www.spedadam.fr](http://www.spedadam.fr)

## 6.5 Copyright Essentials: Germany

### 6.5.1 Copyright Law

[The Copyright and Neighbouring Rights Act](#) (Urhebergesetz) is the legal basis for copyright in Germany.

### 6.5.2 Rights Holder

- Films produced after 1-1-2008:

There is a legal presumption of transfer of the exploitation rights by the authors to the producer, for all known and unknown kind of uses. This does not include the right to make a remake of the film.<sup>32</sup>

- Films produced between 1966 and 31-12-2007

There is a presumption the film producer has acquired the exploitation rights for all the uses which were known at the time of conclusion of the agreement.

For films made prior to 1966 all the authors are right holders, and no legal presumption exists of rights transfer to the producer.

### 6.5.3 Transfer of Rights

According to article 29 UhrG, copyright is not transferable, other than via a testamentary disposition. Rights to use the work in a particular manner may be granted to anyone by the right holder.<sup>33</sup>

After the death of the rights holder, moral rights are bequeathed in the following order:

- (1) Children
- (2) Parents
- (3) Siblings
- (4) Grandparents and their children

The spouse receives  $\frac{1}{4}$  of the legal estate; if there are no children the spouse receives half of the legal estate.

### 6.5.4 Future Rights

From 1 January 2008, the licensing of future unknown exploitation rights is possible. For the period between 1966 and 2008 unknown rights have been transferred if:

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<sup>32</sup> Article 88 UhrG

<sup>33</sup> Article 31 UhrG

- All essential rights have been transferred exclusively
- Without restriction in territory or time
- By the authors

There can be no automatic transfer if the author has objected to this specific transitional clause, before 31 December 2008. In any case, the producer should be contacted and the production-agreement should be examined.

### **6.5.5 Orphan Works**

There are no provisions on orphan works in German copyright law.

### **6.6.6 Collective Rights Management Organisations**

- **GEMA** - composers, songwriters, music publishers: [www.gema.de](http://www.gema.de)
- **VG Wort** - authors, publishing houses: [www.vgwort.de](http://www.vgwort.de)
- **VG Bild-Kunst** - authors of works of fine arts and film works, photographers: [www.bildkunst.de](http://www.bildkunst.de)
- **GVL** - Gesellschaft zur Verwertung von Leistungsschutzrechten performers, tour / event organizers, phonogram producers, video clip producers: [www.gvl.de](http://www.gvl.de)
- **VFF** - Verwertungsgesellschaft der Film- und Fernsehproduzenten mbH film producers, broadcasting companies: [www.vffvg.de](http://www.vffvg.de)
- **GWFF** - Gesellschaft zur Wahrnehmung von Film- und Fernsehrechten mbH film producers, film authors, television producers, videogram producers: [www.gwff.de](http://www.gwff.de)
- **VGF** - Verwertungsgesellschaft für Nutzungsrechte an Filmwerken mbH German and foreign film producers, film authors, television producers, videogram producers: [www.vffvg.de](http://www.vffvg.de)
- **GÜFA** - Gesellschaft zur Übernahme und Wahrnehmung von Filmaufführungsrechten mbH producers of erotic and porn films: [www.guefa.de](http://www.guefa.de)
- **AGICOA** - Urheberrechts-Gesellschaft mbH film producers, film distributions: [www.agicoa.org](http://www.agicoa.org)

## 6.6 Copyright Essentials: Greece

### 6.6.1 Copyright Law

The [Greek Copyright Act](#) came into force in 1993 and has been modified several times.

### 6.6.2 Rights Holder

Authors have copyright to their works. The situation in Greece:

- Films created before 1986: all natural persons that made a creative contribution are authors, therefore initial right holders
- Films created after 1986: only the director is the author<sup>34</sup>

There is no legal presumption or rights transfer to the producer. A contract dealing with the creation of a film between a producer and the director shall specify the economic rights which are to be transferred to the producer. However, if the aforementioned provision is not met, the contract shall be deemed to transfer to the producer all the economic rights, which are necessary for the exploitation of the film, pursuant to the purposes of the contract.<sup>35</sup>

### 6.6.3 Transfer of Rights

Moral rights cannot be transferred.<sup>36</sup> Exploitation rights may be transferred, if the duration of the transfer is not specified the expiration of the contract shall be 5 years after conclusion, provided that conventional mores do not indicate otherwise<sup>37</sup>.

In the absence of a will, the following criteria for inheritance of moral rights apply:

- (1) Direct descendants (children, grandchildren, great grandchildren)
- (2) Parents, siblings
- (3) Grandparents
- (4) Great grandparents
- (5) Spouse
- (6) Greek State

### 6.6.4 Future Rights

In no circumstance may a license or contract refer to forms of exploitation which were unknown on the date of the contract.<sup>38</sup> New forms of exploitation need to be assigned by the right holders.

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<sup>34</sup> Article 3 § 1 law 1597/1986 and 9 Copyright Act

<sup>35</sup> Article 34 Copyright Act

<sup>36</sup> Article 12 Copyright Act

<sup>37</sup> Article 15 § 2 Copyright Act

<sup>38</sup> Article 13 sub 5 Copyright Act

### **6.6.5 Orphan Works**

Currently there are no provisions on orphan works. According to the Hellenic Copyright Organisation the new copyright legislation will contain a provision on orphan works; however the proposed copyright act still has to be approved by the legislator.

### **6.6.6 Collective Rights Management Organisations**

- **The Greek Film Archive Foundation-** [www.tainiothiki.gr/en](http://www.tainiothiki.gr/en)
- **Athina** - collecting society for directors and screenplay writers:  
[www.athinaecinema.gr](http://www.athinaecinema.gr)
- **Hermias, Dias, Iridanos, Promedia** leading societies for film producers: [web.opi.gr](http://web.opi.gr)
- **AEPI** - for composers of music and writers of lyrics: [www.aepi.gr](http://www.aepi.gr)

## 6.7 Copyright Essentials: Hungary

### **6.7.1 Copyright Law**

The [Act LXXVI of 1999 on Copyright](#) regulates copyright in Hungary.

### **6.7.2 Rights Holder**

Authors can conclude an agreement with a producer in which the right of use of the audiovisual work and the right to license such use to third parties can be transferred. The producer then becomes the owner of the exploitation rights. The producer is the natural or legal person, which initiates and organizes the creation of the film.<sup>39</sup> There is an assumption that a contract will be concluded between the author and the producer of a film. Via this contract the author assigns the right of use of the cinematographic creation to the producer. The producer then becomes the owner of the exploitation rights. Not included in this rights however are the exploitation rights connected to:

- Broadcasting
- Leasing right pertaining to works that are included in films
- Simultaneous and unaltered retransmission to the public, by broadcast, cable or other means.

The previous does not apply to films which were created in Hungary before 1946, these have been nationalized under Communist regime and they are currently managed by the Hungarian National Film Archive.

### **6.7.3 Transfer of Rights**

Only transfer of exploitation rights is possible, not of moral rights. In the event of the rights holder's death and in the absence of a will, the following criteria for inheritance of moral rights apply:

- (1) Children
- (2) Grandchildren
- (3) Spouse
- (4) Parents
- (5) Siblings
- (6) Grandparents
- (7) Children of the grandparents
- (8) Other ancestors
- (9) Hungarian State

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<sup>39</sup> Article 65 of Act No. LXXVI of 1999 on copyright

#### **6.7.4 Future Rights**

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

#### **6.7.5 Orphan Works**

In April 2009, provisions on orphan works were added to the Copyright Law of Hungary. Article 57 A-C determines in which way an orphan work may be used. After a diligent search, which has to be documented, the Hungarian Patent Office has the right to grant a non-exclusive license for use. The License is valid for five years, no sublicenses may be giving nor may derivatives be made from the orphan work. Remuneration for use will also have to take place.

If the right holder of the orphan work is located, the license may be withdrawn. The licensee will be able to use the work for one year after the holder is located. The holder of the copyright may claim remuneration from the Patent Office for five years from the date of the expiry of the license or the withdrawal thereof. After this five year period the Patent Office has to transfer the amount of remuneration to the collective management organisation which is authorised to manage the rights which apply to the use of the work. If such an organisation does not exist, the amount goes to the National Cultural Fund.

#### **6.7.6 Collective Rights Management Organisations**

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

- **Artisjus** - Hungarian Bureau for the Protection of Authors' Rights:  
[www.artisjus.hu](http://www.artisjus.hu)
- **FilmJus** - Hungarian Society for the Protection of Audio-Visual Authors' and Producers Rights: [www.filmjus.hu](http://www.filmjus.hu)
- **EJI** - Association of the Arts Unions Bureau for the Protection of Performers' Rights: [www.eji.hu](http://www.eji.hu)

## 6.8 Copyright Essentials: Italy

### **6.8.1 Copyright Law**

Copyright legislation in Italy is codified in [Law no. 633](#) of April 22, 1944. Cinematographic works are protected by copyright.<sup>40</sup> However copyright law does not protect mere recordings of images, such as live-coverage seeing as they lack certain originality.

### **6.8.2 Rights Holder**

There is a legal assumption of transfer of exploitation rights to the producer of a cinematographic work. In absence of an agreement to the contrary, the producer may not make or show adaptations, transformations or translations of the work without the consent of the authors.

### **6.8.3 Transfer of Rights**

Transfer of exploitation rights shall be set out in writing. Moral rights may not be transferred. In the event of the death of the rights holder the order of inheritance is the following:

- (1) Children and Spouse
- (2) Parents
- (3) Siblings and their children

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.

### **6.8.4 Future Rights**

Future rights are not mentioned in Italian copyright law, however fair compensation is needed for the author in the event that the cinematographic work is used in a different manner than defined in the Copyright Act.

### **6.8.5 Orphan Works**

There are no provisions on orphan works in the legislation.

### **6.8.6 Collective Rights Management Organisations**

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, 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:

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<sup>40</sup> According to article 6 Law no. 633

- Italian feature-length films
- Feature-length films from EU countries
- Feature-length films from countries outside of the EU
- 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 in Italy. This registration has more an informative than a constitutive value.

The address of the website is [www.siae.it](http://www.siae.it)

## 6.9 Copyright Essentials: Lithuania

### 6.9.1 Copyright Law

The [Provisions of the Law of the Republic of Lithuania on Copyright and Related Rights](#) came into force in 1999.

### 6.9.2 Rights Holder

Changes in the duration of protection of copyright 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 death

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 concluded before the current legislation came into force, shall remain valid as long as they comply with provisions stipulated by the law.

Intellectual 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 after death of the maker

In any case, protected in Lithuania 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 the protection terms of Lithuanian and foreign actors shall become equal and the term of 70 years after death may be applicable without any exceptions.

There is a legal assumption of rights transfer to the producer. 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)

### **6.9.3 Transfer of Rights**

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 the employer.

Heirs of moral rights 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.

### **9.9.4 Future Rights**

Transfer may not be applied to modes of use which were unknown.

### **6.9.5 Orphan Works**

There is no legislation regarding unknown authors.

### **6.9.6 Collective Rights Management Organisations**

- **LATGA** - For films created after 1994 LATGA distributes licensing fees. From 1958-1994 the state was responsible for this task: [www.latga.lt](http://www.latga.lt)
- **AGATA** - Lithuanian Neighbouring Rights Association [www.agata.lt/en/](http://www.agata.lt/en/)

## **6.10 Copyright Essentials: The Netherlands**

### **6.10.1 Copyright Law**

Dutch copyright has been codified in the Copyright Act of 1912 (Auteurswet). Up to 1972 there was a protection period of 50 years for non-original films; this protection period no longer has any effect due to Directive 93/98/ECC.

### **6.10.2 Rights Holder**

There is a legal assumption of rights transfer to the producer for films made after 1-1-1985.<sup>41</sup> For films made prior to 1985, all contributors with a creative contribution are right holders.

### **6.10.3 Transfer of Rights**

Only the transfer of exploitation rights is possible, the author can waive certain moral rights. The right to be named may be waived; the same applies for the right to oppose to changes in the work or the title of the work. In the event of the death of the rights holder the order of inheritance is the following, if there is no will:

- (1) Spouse & children
- (2) Parents & siblings
- (3) Grandparents
- (4) Great Grand Parents (all of 1-4 descendants)

### **6.10.4 Future Rights**

There are no provisions in the Copyright Act that deal with future rights; it really depends on the wording of the contract whether or not the future rights have been transferred. There have been several court cases on this topic.

### **6.10.5 Orphan Works**

There are no provisions on orphan works in Dutch legislation.

### **6.10.6 Collective Rights Management Organisations**

- **VOICE** - [www.voice-info.nl](http://www.voice-info.nl)
- **Buma/Stemra** - musical composers: [www.bumastemra.nl](http://www.bumastemra.nl)
  
- **DDG** - Dutch Directors Guild: [www.directorsguild.nl](http://www.directorsguild.nl)

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<sup>41</sup> Article 45d Auteurswet

- **Federatie Filmbelangen** – various right holders: <http://www.filmbelangen.nl/>
- **LIRA** – screenplay writers: [www.cedar.nl/lira](http://www.cedar.nl/lira)
- **Netwerk Scenarioschrijvers** – screenplay writers: [www.netwerkscenario.nl](http://www.netwerkscenario.nl)
- **NORMA** – actors etc. : [www.norma.nl](http://www.norma.nl)
- **NBF**- (not a CRM, useful for finding) film and television makers: [www.nbf.nl](http://www.nbf.nl)
- **NVS** - (not a CRM, useful for finding) motion picture producers:  
[www.speelfilmproducenten.nl](http://www.speelfilmproducenten.nl)
- **Pictoright** – photographers, visual artists: [www.pictoright.nl](http://www.pictoright.nl)
- **SENA** – artists/producers: [www.sena.nl](http://www.sena.nl)
- **VEVAM** – authors/producers: [www.sekam.nl](http://www.sekam.nl)

## 6.11 Copyright Essentials: Norway

### 6.11.1 Copyright Law

The [Norwegian act](#) relating to copyright in literary, scientific and artistic works etc, adopted on the 12<sup>th</sup> of May 1961 with subsequent amendments, the latest came into force 1<sup>st</sup> of January 2007. Also of importance are the Regulations relating to copyright, adopted on the 21<sup>st</sup> of December 2001 with subsequent amendments, the latest from 2008.

### 6.11.2 Rights Holder

According to the Norwegian Copyright Act § 39f, there is an assumed transfer of rights to the producer if the author has assigned the right to use a work for film. The producers' right comprises:

- the right to make copies of the cinematographic work,
- the right to make the cinematographic work available to the public by distributing copies and by showing the work, and
- the right to subtitle or translate speech

Nevertheless, this does not apply to:

- already existing works,
- screenplays and musical works specifically created for use in the cinematographic work, or
- the principal direction of the cinematographic work

### 6.11.3 Transfer of Rights

According to § 39 in the Copyright Act, the author may wholly or partly assign his right to exploit a work. After the death of the rights holder, moral rights are bequeathed in the following order:

- (1) Children and their offspring and spouse
- (2) Parents and siblings and their offspring
- (3) Grandparents and their offspring, but no more distant relations than grandchildren of grandparents
- (4) The Norwegian State

Number 1 is obligatory inheritance. Numbers 2 – 4 only come into effect if the decedent does not leave a testament.

#### **6.11.4 Future Rights**

According to the Act § 39a, if the author has assigned the right to use the work in a specific manner or by specific means, the assignee shall not have the right to use it in another manner.

#### **6.11.5 Orphan Works**

There is no legislation which covers orphan works.

#### **6.11.6 Collective Rights Management Organisations**

- **Norwegian Film AS** - <http://www.norwegianfilm.as/>
- **Motion Picture Licensing Company** - [www.themplc.co.uk](http://www.themplc.co.uk)
- Norsk filmforbund (various film workers)
- The Norwegian film and TV producers association
- Directors' Guild of Norway
- **Writers' Guild of Norway**
- **Norwegian Authors' Union**
- **TONO – Performing Rights Society (music)**
- **The Norwegian Actors Equity Association**

## 6.12 Copyright Essentials: Portugal

### **6.12.1 Copyright Law**

The Portuguese copyright legislation in force is entitled [‘Código do Direito de Autor e dos Direitos Conexos](#).

### **6.12.2 Rights Holder**

Since 1966 the rights holder are deemed to the following authors: the director, the screenwriter, the dialogues writer and the composer of the music for use in the film. If, in the course of the exploitation period, the rights holders are unable to defend their rights otherwise, the producer is considered their representative for that purpose.

Between 1927 and 1966, the rights of the author were perpetual and granted to the producer of the cinematographic work.

### **6.12.3 Transfer of Rights**

Exploitation rights can be transferred via contract, moral rights cannot be transferred. A producer will often only receive an authorization from the right holder for distribution etc. If the transfer or assignment is temporary and no duration has been specified, it is assumed that the maximum term is 25 years in general and 10 years in the case of a photographic work or applied art. The exclusive rights granted expire, when the work has not been used for seven years.<sup>42</sup>

The order of inheritance of moral rights is:

- (1) Spouse and descendants
- (2) Spouse and ascendants
- (3) Brothers and their descendants
- (4) Other next-of-kin until the 4<sup>th</sup> grade
- (5) The State

### **6.12.4 Future Rights**

Article 68 of the Copyright Act, no. 1, establishes that: “the exploitation and, in general, the use of a work can be made, according to their type and nature, by any of the forms known nowadays or to be known in the future”. It also includes that “the author is granted, among others, the exclusive right to make or to give permission to the (...) total or partial reproduction, whatever the form in which it is made”.

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<sup>42</sup> Art 138

#### **6.12.5 Orphan Works**

There are no provisions on orphan works in Portuguese legislation.

#### **6.12.6 Collective Rights Management Organisations**

- **SPA** – Authors Society: [www.spautores.pt](http://www.spautores.pt)
- **GDA** - the Management of Artists Rights: [www.gdaie.pt](http://www.gdaie.pt)

## 6.13 Copyright Essentials: Switzerland

### 6.13.1 Copyright Law

[The Swiss Federal Law concerning authors' rights and related rights](#) came into force in 1993. Audiovisual works are protected; there is no distinction in Swiss copyright law between original and non-original films.

### 6.13.2 Rights Holder

All artistic contributors to an audiovisual work are rights holders. There is no presumption of rights-transfer. Screenwriters are not considered makers of the film, but authors of pre-existing works.

### 6.13.3 Transfer of Rights

Rights may be transferred, with the exception of moral rights. If not specifically stated in the will of the rights holder moral rights are passed down as follows:

- (1) Children & wife/husband
- (2) Parents
- (3) Further related persons

### 6.13.4 Future Rights

There are no specific rules for future forms of exploitation.

### 6.13.5 Orphan Works

If the author is unknown, the protection period ends 70 years after the first publication.<sup>43</sup> Utilisation of orphan rights requires authorisation by Collective Rights Management Organisations, such as Suissimage: only orphan works may be used.<sup>44</sup>

### 6.14.6 Collective Rights Management Organisations

- **Suissimage** - Swiss Authors' Rights Cooperative for Audiovisual Works:  
[www.suissimage.ch](http://www.suissimage.ch)
- **Swiss Film Center** - The SWISS FILMS Foundation is the promotion agency for Swiss filmmaking, resource for finding details on right holders: [www.swissfilms.ch](http://www.swissfilms.ch)

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<sup>43</sup> Art 31 Federal Law on Copyright and Neighbouring Rights

<sup>44</sup> Art 22b Federal Law on Copyright and Neighbouring Rights

## 7. Timeline: Important Dates in European Copyright Legislation



## 8. Conclusion

Clearing the collection of an audiovisual archive for online use is a very time-consuming, but essential task. If right holders are identified, and the work is still protected, the clearing is far from completion yet. At EYE we have found that actually reaching an agreement with right holders takes quite some time.

In December an assessment was made of the legal status of the content which the EFG partners are providing for the website. Most of the archives are providing content which has already been cleared, or of which the partners own the exploitation rights. Several archives have indicated they do not have enough financial resources to perform a diligent search and chose not to use the works of which the origin is unclear. This is a path of least resistance, however in order to make adequate use of one's collection knowing the legal status of the collection is key. These guidelines support the determination of the legal status of works.

Clearing archival works for online content is a recent development. Whether or not archives have been faced with claims from right owners is unknown. It is of concern to the archives whether or not they might face claims, how to act and what risks are entailed. A risk assessment should be made before putting works online, but disclosing works online is a decision which each archive should make for itself.

Current European legislation is not sufficient for dealing with orphan works, a critique which has been mentioned often.<sup>45</sup> A recent survey of the ACE under its members shows that a large part of the collection held by archives is considered orphan works.<sup>46</sup> The current Directive on copyright allows for too much discrepancy among the member states copyright laws. A unified copyright law would be the way forward for online use. The Association des Cinémathèques Europeennes has also indicated that legislation needs to change in order to resolve the issue of orphan works; a large part of European heritage cannot be disclosed online. The extended collective licensing framework of the Nordic countries would be a good solution to the orphan works problem for archives and museums in the EU.

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<sup>45</sup> Stef van Gompel and Professor Bernt Hugenholtz of the Institute for Information Law (IViR) wrote a comparative article on orphan works and suggested solutions in which they recommend using the Extend Collective Licensing for the whole of the EU, see also "The orphan works problem: The copyright conundrum of digitizing large-scale audiovisual archive, and how to solve it" *Popular Communication - The International Journal of Media and Culture*, 2010-1, p. 61-71.

<sup>46</sup> 21% percent of the collection of 24 archives is presumed to be orphan, for full details please see [http://www.acefilm.de/fileadmin/dokumente/ACE\\_Orphan\\_Works\\_Survey\\_Results\\_final\\_1004014.pdf](http://www.acefilm.de/fileadmin/dokumente/ACE_Orphan_Works_Survey_Results_final_1004014.pdf)

In 2010, the cooperation between the various legal experts of the archives has improved, resulting in successful and informative discussions. The feedback we gathered was used to make these guidelines as practical and useful as possible.

Determining the legal status of a work and clearing the work for online use may take quite some time and most archives have indicated they lack the financial resources to make their collection available to the general public. This issue does not only affect partners of the European Film Gateway but all European archives and museums, of which many contribute to Europeana.eu. The disclosure of Europe's cultural heritage online should be encouraged further. Solutions for the copyright clearance of mass digitized collections should be reached on a European level for all cultural sectors; the same rules should apply in all EU member states.

## Glossary

<b>Author</b>	or maker: in copyright law this is the person/entity who is the creator of an artistic or literary work
<b>Audiovisual work</b>	or cinematographic work: no set definition is given in any European directives or in the Berne Convention. The Rental Directive uses the term “film” and it specifies it as: the term “film” shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound. <sup>47</sup>
<b>Copyright</b>	entitles the right holder exclusively to distribute, reproduce (make copies of the work) and in other ways make use of his work. These are the so called exploitation rights which may be assigned. Copyright also consists of moral rights
<b>Copyright notice</b>	notice under which until 1979 films in the USA had to be published to receive copyright. The following information should be on the notice: The symbol ©/ copyright/ copr. Year of first publication of the work and the name of the copyright owner of the work.
<b>Diligent search</b>	thorough search, which has to be conducted in good faith with due diligence before a work, can be declared an orphan work; standards have been set by European Digital Library (See Annex)
<b>Exploitation rights</b>	also known as economic rights, which belong to the author to exploit their work, this can be done through publication and reproduction; also known as reproduction rights, these rights can be assigned
<b>Moral rights</b>	rights, which belong to the author, are only part of inheritance if the author has explicitly stated this. These rights consist of being named as the author; oppose publication and any alteration of the work. Also known as “personal rights”. In general these works could be said to be inalienable

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<sup>47</sup> Article 2 of the Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property

<b>Neighbouring Rights</b>	or related rights, works connected to the work. These are the rights of performers, producers and broadcast organisations. These rights last for 50 years and can prevent the fixation, distribution, reproduction or publication of a performance.
<b>Orphan work</b>	works from which the copyright holder/right holder cannot be identified or it is impossible to locate the copyright holder/right holder
<b>Public domain</b>	works which are no longer protected by copyright
<b>Publication</b>	lawfully making a work available to the general public
<b>Producer</b>	person who creates conditions for the creation of an audiovisual work, most importantly arranges funding. Hold producers rights, these last for 50 years and: Im producers have the right to prevent: the direct or indirect reproduction of the film/ the distribution of the film /the "making available to the public" of the film. These last 50 years after publication or creation.
<b>Rights holders</b>	persons or sometimes entities, which hold rights to a work. This is not restricted to the copyright holder or author alone.
<b>Underlying work</b>	work which is adapted to create a new work, permission of the author of the underlying work is needed for adaptation but also for publication or reproduction of the new work.
<b>Work</b>	also cinematographic or audiovisual work: in the context of these guidelines, the work of art that is protected by copyright



## Annex 1 Tabular Overview Countries (updated)

Country	Original/Non-Original work?	How long does copyright last?	Exception for museums/archives?	Exceptions for educational use	Who are the authors of a film?(prior to possible rights transfer)	Can Employees/Legal entities be makers?	Assignment of rights possible? Legal presumption?	Future forms of exploitation?	Who are the heirs?*	Orphan Works
<b>AT</b>	No distinction	70 years after death of the authors	Art 56b CA may show audiovisual work on its premises to no more than 2 visitors at a time (not for profit)	Schools may for purpose of teaching publicly perform cinematographic works. Author is entitled to have remuneration (Art 56c)	<ul style="list-style-type: none"> <li>• main director relevant for protection period also:</li> <li>• author of screenplay</li> <li>• author of dialogues</li> <li>• music composer</li> </ul>	Exploitation rights in commercially produced cinematographic works shall belong to the owner of the film company (38 CA)	Commercial films: legal assumption of rights transfer to producer.	Future forms of exploitation are not mentioned in the law. However one has to agree to transfer rights, so specific mention should be made in contracts.	<ol style="list-style-type: none"> <li>1. Children</li> <li>2. Parents</li> <li>3. Siblings</li> <li>4. Grandparents and their children</li> </ol> <p>N.B.: spouse receives 1/4 of legal estate</p>	There exist no specific rules concerning orphan works.
<b>CH</b>	No distinction	70 years after death of principal director	None	Falls under private use: use by teacher in class (Art 19 sub 1b)	All artistic contributors to an audiovisual work are rights holders (scenario writer is considered author of the underlying work)	No legal entity can be indicated as the author of a work	No legal assumption, but authors may transfer rights to producer explicitly in writing	Future forms of exploitation are not mentioned in the law. However one has to agree to transfer rights, so specific mention should be made in contracts.	<ol style="list-style-type: none"> <li>1.Children &amp; spouse</li> <li>2. Parents &amp; spouse</li> <li>3. Further related persons</li> </ol>	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 who's authors are unknown may be used*
<b>CZ</b>	No distinction	70 years after death of the authors	Reproduction may be made for preservation purposes (art 37)	Educational use is internal at the school, for lectures etc. (Art 31&35)	<ul style="list-style-type: none"> <li>• Director</li> <li>• author of screenplay</li> <li>• author of dialogues</li> <li>• music composer</li> </ul>	Employer acquires economic rights, if the work is made in employment. (58 CA) Works created to order: copyright remains with maker.	No legal assumption, but director may give an exclusive license to the producer (63 sub 3a)	Under CR any and all forms of exploitation that did not exist at the time of transfer, are explicitly excluded for licensing or transfer of CR. Art 64 CA	Rights are transferred to legal successor through agreements or testaments of the director. 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 authorial creativity for it to be considered a work. So called "Laufbilder" are only protected for 50 years*	70 years after death of the authors	52b CA permits making available and displaying works at the premises of the institutions themselves. Private use and research only	Limited parts of the work may be used for instructional/school use (art 46)	<ul style="list-style-type: none"> <li>• main director</li> <li>• author of screenplay</li> <li>• author of dialogues</li> <li>• music composer</li> </ul>	There are no specific rules for legal entities. Copyright remains with maker, even if work is made in employment/on order.	For films made after 1966, there is a legal presumption of rights transfer to the producer	37I CR: automatic transfer for unknown rights only applies if all rights of use were exclusively acquired without restriction in territory or time by the author between 1966-2008. From 2008 onwards contractual agreements are necessary for the transfer of rights for future/unknown forms of exploitation. Can be revoked, adequate remuneration correlated to the profits generated by such exploitation required.	<ol style="list-style-type: none"> <li>1. Children</li> <li>2. Parents</li> <li>3. Siblings</li> <li>4. Grandparents and their children</li> </ol> <p>N.B.: spouse receives 1/4 of legal estate, or 1/2 if there are no children</p>	There exist no specific rules concerning orphan works.
DK	No distinction	70 years from death of maker, or for films prior to 1995 50 years from death of all creative contributors (whichever gives the longest protection)	16 and 16a CA, preservation copies and works may be made available at the institutions themselves for personal viewing or study	Reproduction within Educational activities is allowed (art 13)	<ul style="list-style-type: none"> <li>• main director</li> <li>• author of screenplay</li> <li>• author of dialogues</li> <li>• music composer</li> </ul>	A legal entity cannot be deemed as the maker of a film.	Legal assumption of economic rights transfer to producer	It has to be explicitly stated in the contract that also unknown forms of exploitation are covered. No presumption of transfer.	<ol style="list-style-type: none"> <li>1. Children &amp; spouse</li> <li>2. Parents &amp; spouse</li> <li>3. Further related persons</li> </ol>	There exist no specific rules concerning orphan works. Please see Deliverable 5.2 for specifics on Collective Licensing

<b>EL</b>	No distinction	70 years after death of the authors	22 CA Institution may make preservation copy (only if the additional copy cannot be obtained from the market promptly and on reasonable terms)	Short extracts of a work for teaching purposes at an educational establishment, in accordance with fair practice and does not conflict with normal exploitation.	<ul style="list-style-type: none"> <li>• main director</li> <li>• for protection period also includes:</li> <li>• author of screenplay</li> <li>• author of dialogues</li> <li>• music composer</li> </ul>	Copyright remains with natural person, even though work is created in employment. This also applies to third party commission. A legal entity cannot be deemed author of the film.	Yes, via a contract. If the contract does not specifically mention which rights are transferred, the legal assumption is made that all the economic rights are transferred which are necessary for the exploitation of the work. (34 CR)	In no circumstance may a license refer to form of exploitation which were unknown on the date of the contract (Art 13 sub 5)	<ol style="list-style-type: none"> <li>1. Children/ Grandchildren, spouse receives 1/4th of estate</li> <li>2. Parents/Siblings spouse receives 1/2 of estate</li> <li>3. Grandparents/ children, spouse 1/3</li> <li>4. Great grandparents, spouse 1/2</li> <li>5. Spouse inherits all</li> <li>6. Greek State</li> </ol>	There are no specific provisions in Greek Copyright Law regarding orphan works.
<b>FR</b>	Copyright protection is only given to films that are original and are a creative expression of their author	70 years, moral rights are perpetual.	In order to preserve the work, a copy may be made. Access for research on the premises of the institution.	Dissemination in academic gatherings, quotations in academic works (Art L122-5)	<ul style="list-style-type: none"> <li>• main director</li> <li>• author of screenplay</li> <li>• author of dialogues</li> <li>• music composer</li> <li>• author of pre-existing work</li> </ul>	No legal entity can be indicated as the author of a work. Author retains authorship in employment. Economic rights can be transferred contractually; this is not automatically or presumed.	Legal assumption of economic rights transfer to producer	Any provision in an assignment that affords the right to exploit a work in a form that is unforeseeable or not foreseen on the date of the contract shall be explicit and shall stipulate remuneration correlated to the profits generated by such exploitation.	<ol style="list-style-type: none"> <li>1. Children</li> <li>2. Spouse (not remarried)</li> <li>3. All other descendants</li> </ol>	After a 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.
<b>HU</b>	No distinction	70 years after death of the authors	Archiving from an own copy for scientific purpose or public library supply (art 35)	On site viewing for educational use (art 38 sub 5)	<ul style="list-style-type: none"> <li>• Director</li> <li>• author of screenplay</li> <li>• music composer</li> <li>• any person with creative contribution</li> </ul>	Employer acquires economic rights (unless otherwise agreed) If the work is made in employment, the delivery of the work is considered authorisation for publication	Legal assumption of economic rights transfer to producer (only exception is the musical score)	Under copyright any and all forms of exploitation that did not exist at the time of transfer, are explicitly excluded for licensing or transfer of copyright.	<ol style="list-style-type: none"> <li>1. Children</li> <li>2. Grandchildren</li> <li>3. Spouse</li> <li>4. Parents</li> <li>5. Siblings</li> <li>6. Grandparents</li> <li>7. Other ancestors</li> <li>8. Hungarian state</li> </ol>	Patent office can grant license upon request, for compensation of use. License is for 5 years, in Hungary non-exclusive, non-transferable. Art 57A

<b>IT</b>	Originality criterion is of importance, live coverage is not protected.*	70 years after death of the authors	Art 69 CA preservation copy may be made	Fragments and parts of the work may be used for instructional purpose is permitted, limited use provided it does not conflict with commercial exploitation of the work (Art 70)	<ul style="list-style-type: none"> <li>The main director</li> <li>author of screenplay</li> <li>author of dialogues</li> <li>music composer</li> </ul>	No legal entity can be indicated as the author of a work	Legal assumption of economic rights transfer to producer (art 45)	This is not mentioned in the law.	1. Children & Spouse 2. Parents 3. Siblings & their children	There exist no specific rules concerning orphan works.
<b>LT</b>	No distinction	70 years after death of the authors	Permits making available and displaying works at the premises of the institutions themselves. Private use and research only. Preservation copy may be made.	Short published works or a short extract may be reproduced for non-commercial teaching, extent justified for the purpose (art 22)	<ul style="list-style-type: none"> <li>Main director</li> <li>Scriptwriter</li> <li>Composer</li> <li>Cameraman</li> <li>art director</li> </ul>	Economic rights in a work created in employment are transferred to the employer of the period of five years, unless otherwise agreed upon.	Legal assumption of economic rights transfer to producer	It shall not be permitted to transfer the right in all future works of an author, which are not clearly identified. Transfer of the author's economic rights may not be applied to the modes of use of a work, which at the moment of the transfer of the author's economic rights do not exist or are unknown.	1. Children & Spouse 2. Parents 3. Siblings & their children	There exist no specific rules concerning orphan works.
<b>NL</b>	No distinction, previously this did exist.	70 years after death of the authors	Art 16n CA preservation copy may be made	A published work may be partly used without permission for educational purposes if it is non-commercial, reasonable, fair compensation art 16	<ul style="list-style-type: none"> <li>The main director</li> <li>author of screenplay</li> <li>author of dialogues</li> <li>music composer</li> </ul>	Employer is deemed author of the work made in employment. Third party assignments: unless otherwise agreed maker remains author.	Films made from 1985: legal assumption of economic rights transfer to producer	Copyright does not deal with this, depends on the contract	1. Spouse & children 2. Parents & siblings 3. Grandparents 4. Great Grand Parents (all of 1-4 descendants)	There exist no specific rules concerning orphan works.
<b>NO</b>	Work must be original and result of creative effort of the author	70 years after death of the authors	Preservation copies may be made in certain institutions without permission, if the film is no longer available. Art 16 CA The National Library of Norway can make preservation copies unconditionally. These copies can be viewed in the library's own premises.	Copies of a published work may be made for use in educational activities	<ul style="list-style-type: none"> <li>All creative contributors</li> </ul> <p>Most important are:</p> <ul style="list-style-type: none"> <li>main director</li> <li>author of screenplay</li> <li>author of dialogues</li> <li>music composer</li> <li>film producers have rights to the film recording</li> </ul>	Legal entity cannot be author, no specific rules for 3rd party commissions etc	Legal assumption rights transfer to producer (39f)	Depends on interpretation of the contract (CA only deals with specific mentions)	1. Children & Spouse 2. Parents 3. Siblings 4. Grandparents	There exist no specific rules concerning orphan works.

PT	No requirements for originality are mentioned.	70 years after death of the authors	Art 75, 2e and 189: archives can undertake reproduction acts to assure the archival and preservation of any work	Partial reproduction provided that the numbers of copies are used exclusively for educational purposes in such establishment.	<ul style="list-style-type: none"> <li>• Director</li> <li>• author of screenplay</li> <li>• author of dialogues</li> <li>• music composer</li> </ul>	Works made for hire should be regulated in a contract, otherwise the author is right holder	No legal assumption of rights transfer. Producer will receive authorization for use.	The law establishes that the exploitation and, in general, the use of a work can be made, according to their type and nature, by any of the forms known nowadays or to be known in the future, and grants the author the exclusive right to authorize the use of a work.	<ol style="list-style-type: none"> <li>1. Spouse and descendants;</li> <li>2. Spouse and ascendants;</li> <li>3. Brothers and their descendants;</li> <li>4. Other next-of-kin until the 4th grade;</li> <li>5. The State.</li> </ol>	There exist no specific rules concerning orphan works.
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\*\*= only in the case that this has not been designated in a last will and testament

## **Annex 2 Example of License Agreement for online exploitation**

This License Agreement (LA) provided on the following page has been drafted for the online exploitation of works in the collection of EYE. This LA may serve as a starting point for the drafting of an agreement for your own archive, it only serves as an example and in no way will EYE be responsible for the validity of this document. The LA has been drafted under Dutch Law; please check with a local lawyer whether this agreement may also be valid for use in your own country.

## AGREEMENT

video-on-demand exploitation by [ name institution]

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### THIS AGREEMENT IS MADE BETWEEN:

1. [name, legal form], having its seat [natural person: residing] in [place] and its office address at [address, place], hereinafter referred to as: the 'Rightsholder', for the purposes hereof duly represented by [...];

and

[name, legal form], having its seat [natural person: residing] in [place] and its office address at [address, place], hereinafter referred to as: the [name institution], for the purposes hereof duly represented by [...]; [ name institution] THE PARTIES HEREBY AGREE AS FOLLOWS:

#### 1. Permission for exploitation by [ name institution]

The Rightsholder holds the rights to the audiovisual works stated in the annexes to this agreement (these works are hereinafter referred to as: the 'Works'). The Rightsholder grants [ name institution] permission to exploit the Works and the Film-related Material (as defined in Article 4.1) in accordance with this agreement and subject to the terms, conditions and restrictions set forth in the relevant annex for each individual Work.

#### 2. Types of exploitation for which permission is granted

- 2.1. The annexes to this agreement specify for each individual Work the scope of the permission granted by the Rightsholder under this agreement; the types of permission are defined as follows:

- a) **Video-on-demand:** permission to exploit the Work/Works via [ name institution]'s infrastructure and to make the Work/Works available to end-users via video-on-demand (hereinafter: 'VOD'). For the purposes hereof VOD means: the electronic or digital distribution of a Work (i.e. without a physical medium) by means of a direct signal to one individual customer in order to enable such customer to view the Work once, or without limitation during a short period, on a television, computer or other screen at a time to be determined by the customer.

The permission referred to in this clause a) also includes [name institution]'s right to deliver or make the Work/Works available to third parties, who may then exercise the exploitation rights granted to [ name institution] on [ name institution]'s behalf (either through embedded links or otherwise).

- 2.2. For the purposes of this Article 2, the term 'end-user' means:

- a) a consumer, for domestic viewing;
- b) a teacher, for class viewing at an educational institution and as part of an educational programme;
- c) an employee of a company, for viewing by such employee only and for internal business purposes only.

- 2.3. The separate annexes also state for each Work whether any territorial restrictions apply to the permission granted by the Rightsholder in this agreement.

- 2.4. The permission granted in this agreement by the Rightsholder to [ name institution] may be withdrawn by giving three months' notice in writing to the [name contact person institution], which notice must be sent to [name institution]'s office address. The Rightsholder must specify in the written notice in respect of which Works the permission is withdrawn.

#### 3. Non-exclusivity

It is expressly provided that the permission granted in this agreement is non-exclusive.

#### 4. Permission for the exploitation of Film-related Material

- 4.1. To the extent that the Rightsholder is also able to assert rights in respect of publicity material

Parties' initials:

1

**Annex – Permission granted to [ name institution] for an individual Work**

**Rightsholder:**

**A. Identification of the Work**

<b>Name of production or series</b>	
<b>Year of first release</b>	

**B. Type of Permission.** Please tick the appropriate box for the type of permission granted for the territory in question (the term 'Video-on-demand' is defined in the agreement). Permission for Video-on-demand in the [name of country] is a minimum requirement.

<b>Territory</b>	<b>Type of Permission</b>	<b>Choice (please tick yes or no)</b>	
<b>[Country]</b>	Video-on-demand (Art. 2.1a)	Yes <input checked="" type="checkbox"/>	
<b>World (excluding NL / B)</b>	Video-on-demand (Art. 2.1a)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<b>Other (please specify per territory):</b>	Please provide details on a separate sheet appended to this Annex		

**C. Other rightsholders (where appropriate).** If the Rightsholder is not fully entitled to grant [ name institution] the permission set out in this agreement, the Rightsholder must provide details in the table below of the party whose permission [ name institution] also requires, for the territories specified above under B:

<b>Territory</b>	<b>Type of permission required</b>	<b>Name and contact details of third party</b>
<b>[Country]</b>		
<b>Other (please specify per territory):</b>	Please provide details on a separate sheet appended to this Annex	

**D. Signed for approval:**

Date: \_\_\_\_\_

[ name institution]:

**Rightsholder:**

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Parties' initials:

1