ALAI CONGRESS 2022 – ESTORIL, Portugal
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UK responses to ALAI QUESTIONNAIRE

During the writing of the national report, it is requested that the relevant sources (norms, legal literature, Case-Law) be accurately cited, whenever possible, in footnotes, indicating the main abbreviations used and using consistent terminology.

When mentioned for the first time, specific national concepts and institutions that may not be known outside their legal system should be made explicit.

The answers should be concise, and the structure of the questionnaire should be preserved, as much as possible, to facilitate the work of comparative analysis and presentation by the rapporteurs at the Congress.

As questions regarding remuneration and collective management may have already been answered in previous national reports, it is kindly requested that a reference is made to the relevant report, including a link in case it remains online, provided that it is still up to date. If that is not the case, national groups are kindly requested to update the information given by previous reports.

MAIN THEME: COPYRIGHT, NEIGHBOURING AND SPECIAL RIGHTS - STATE OF AFFAIRS AND FURTHER OUTLOOK

General Note on UK law after 'Brexit'

After the United Kingdom left the European Union, with effect from the end of 2020 (known as "IP Completion Day"), certain arrangements came into effect to preserve/replace registered intellectual property rights (eg registered designs). For the unregistered rights covered by this questionnaire, EU law was carried forward by confirming that implemented Directives and EU case law remain effective as part of 'retained EU law'. Decisions to IP Completion Day of the European Court of Justice remain precedential and subsequent decisions are likely to be highly persuasive. The UK Supreme Court and the Courts of Appeal in the three jurisdictions comprising the UK (England & Wales; Northern Ireland; Scotland,) may diverge from these, but only to a very limited extent. The mechanisms of and effects of these principles are admirably explained by Court of Appeal Judge the Rt Hon Sir Richard Arnold on 2 December 2021 when delivering the Competition Law Association's 22nd Burrell Lecture 'Divergence of UK Law from EU Law after Brexit: The Example of Intellectual Property'[1].

[1] Full text available at https://www.judiciary.uk/wp-content/uploads/2021/12/Arnold-LJ-Burrell-Lecture.pdf

General note on abbreviations

UK case-law citations used here follow the BAILII neutral form of citation, with year, court and number in chronological order of the decision within that court and year.
EWHC = England and Wales High Court (first instance)
Ch = Chancery division of EWHC (with main jurisdiction over copyright and related rights)
QB = Queen's Bench Division of EWHC
EWCA Civ = England and Wales Court of Appeal, Civil division
UKSC = UK Supreme Court
Etc

General note on collective licensing and licensing bodies

Up-to-date information is available from the UK Intellectual Property Offices recently updated 'Licensing bodies and collective management organisations'.[2]

Note of thanks

Warm thanks to BLACA executive committee members and friends of BLACA for help in completing the questionnaire. As different people/teams completed the various sections, there is variety of format and of detail. We hope that ALAI keynote speakers and members will find the responses useful and we thank the Congress organisers in advance of an exciting meeting in Portugal.

BLACA 2022

PANEL I – PERFORMER'S RIGHTS – A COMPARATIVE OVERLOOK

1- What types of performers are there according to your legal framework?

The Copyright, Designs and Patents Act 1988 does not classify different types of performer (nor is "performer" statutorily defined) but a "performance" is defined as:

"(a) a dramatic performance (which includes dance and mime),
(b) a musical performance,
(c) a reading or recitation of a literary work, or
(d) a performance of a variety act or any similar presentation,
which is or so far as it is, a live performance given by one or more individuals"

2- Do all types of performers enjoy Neighbouring Rights protection?

All of the above types of performance have the same protection.

[2] Available at https://www.gov.uk/guidance/licensing-bodies-and-collective-management-organisations, updated to 26 July 2022

3- Does the law distinguish between featured/non-featured performers? How?

There is no statutory distinction.

4- Which rights are awarded to each type of performer?

I- *Live performances:*

a) Fixation;

b) Broadcasting;

A performer's rights are infringed by a person who, without the performer's consent—
(a) makes a recording of the whole or any substantial part of a qualifying performance directly from the live performance,
(b) broadcasts live the whole or any substantial part of a qualifying performance,
(c) makes a recording of the whole or any substantial part of a qualifying performance directly from a broadcast of the live performance.

II- *Fixed performances:*

c) Reproduction;

d) Distribution;

e) Rental;

f) Making Available to the public;

g) Communication to the Public;

h) Public performance;

i) Broadcasting;

j) Retransmission;

k) Direct Injection;

l) Any other rights (for example,are moral rights attributed to performers? Which prerogatives does it comprehend?)

A performer's rights are infringed by a person who, without the performer's consent, and in respect of a qualifying performance by the performer:

Makes a copy of a recording of their performance;

Issues copies to public of a recording of their performance;

Rents or lends copies to the public of a recording of their performance; or

Makes available to the public a recording of their performance.

Where a commercially-published sound recording of a qualifying performance is played in public or communicated to the public (other than by making available), the performer is entitled to equitable remuneration from the owner of the copyright in the sound recording.

If the recording is made without the consent of the performer, it is an infringement of the performer's rights if a person shows or plays the recording in public or communicates it to the public (or imports, possesses or deals with that recording) and that person knows, or has reason to believe, the recording was made without the performer's consent.

Performers have **moral rights** (subject to certain exceptions) as follows:

Whenever a person—

(a) produces or puts on a qualifying performance that is given in public,

(b) broadcasts live a qualifying performance,

(c) communicates to the public a sound recording of a qualifying performance, or

(d) issues to the public copies of such a recording,

the performer has the right to be identified as such.

The performer of a qualifying performance has a right which is infringed if—

(a) the performance is broadcast live, or

(b) by means of a sound recording the performance is played in public or communicated to the public,

with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

5- What is the nature of those rights? – Statutory? Contractual?

All of the above rights are statutory.

6- Which of them are exclusive rights/remuneration rights?

See above, where this is specified.

7- Which exceptions/limitations generate remuneration rights for performers?

N/a

8- Which rights are transferred to music/audiovisual producers? For how long?

9- Are there any legal presumptions of transfer or is it voluntary/contractual?

Taking Q8 and Q9 together, there is a statutory presumption of transfer of the rental right in cases of film production agreements, with an associated right to equitable remuneration.

10- Are there any unwaivable and inalienable remuneration rights?

Performers' rights to consent to the recording of a live performance, to receive equitable remuneration when recordings of their performances are played in public/communicated to the public, and in respect of the exploitation of recordings made without consent, are not transmissible except on death or by operation of law (such as bankruptcy).

11- What type of compensation is paid in exchange? How is it set? For how long?

Unclear what this question is asking.

13- How is "streaming" qualified in your Country for rights awarding purposes?

This depends on the functionality of the streaming service, in order to determine if it is a making available service (in which case performers have exclusive rights but these are usually bought out) or otherwise a communication to the public (in which case performers have a remuneration right).

14- Whose authorization is it required for the "streaming" of music/audiovisual content?

See Q12 above.

15- What is the estimated level of copyright infringement in your Country?

16- What is the current level of disclosure on economic returns from digital platforms?

16- How is performer's compensation determined for each business model?

17- Are there minimum amounts due? Any other economic benefits?

18- Do UGC platforms contribute to such compensation schemes? How?

Not in a position to comment on Q14-Q18 (sorry).

19- Has the Beijing Treaty been implemented in your Country, at least, in part?

Not yet, but the UK Government has stated that this is one of its strategic priorities for 2022-2023; there was some initial high-level consultation on implementation last year but the UK Government has not yet published a response and further consultation is expected soon.

20- Which rights are collected by Collective Management Organisations (CMOs)?

21- Which CMOs represent performers in your Country?

PPL (for musical performers) and BECS (for audio-visual performers):

- PPL administers performer equitable remuneration payments for the playing in public/communication to the public (excluding making available) of sound recordings of qualifying performances. This does not require a mandate from the performer given its nature as a statutory remuneration right against the sound recording copyright owner.
- Details of BECS can be found here: https://becs.org.uk/

22- Do these CMOs comply with transparency principles?

Yes – under UK regulations directly mirroring the requirements of the EU Collective Rights Management Directive, including publication of annual transparency reports.

23- Is it possible to find out how much income is provided by each type of rights?

24- What is the current litigation level for performers' rights in your Country?

25- Are there any relevant Court Decisions concerning performer's rights?

Unable to comment on Q23/Q24. Not aware of any re Q25.

26- Does the Principle of National Treatment apply to all foreign performers?

There are detailed statutory rules dealing with performance qualification. In summary:

Performances are eligible for protection if any of the following applies:

the performance was given in, or by a citizen or resident of, the UK or a country that is party to the Rome Convention, WPPT or a member of the WTO;

the performance is linked to the Channel Islands, the Isle of Man or an Overseas Territory as set out in sections 181 and 206 of the CDPA.

Performances from countries which are party to the Rome Convention or WPPT normally receive greater protection than those from countries which are not party to these treaties. However, performances from countries which are party to the WPPT but not the Rome Convention normally receive less protection than those from countries which are party to the Rome Convention.

Performances in films normally qualify for protection only if they come from countries that are party to the Rome Convention. Performances in sound recordings normally only qualify for remuneration for being played in public or broadcast if they come from a country that provides equivalent protection to UK performers.

28- Are there "appropriate and proportionate remuneration" provisions?

No – the UK has not, for example, implemented the Copyright DSM Directive.

29- Are CMO´s mandates always exclusive and encompassing all rights?

See Q20/Q21

30- Are there any partial/global revocation of transfer of rights agreements provisions?

30- Are there any provisions on contractual remuneration adjustments?

Not able to comment.

PANEL II – PHONOGRAM PRODUCERS' RIGHTS

1. Which rights are awarded to phonogram producers?

The protection of phonograms has a long tradition in UK copyright law. Phonograms were first protected as mechanical instruments under the 1911 Copyright Act. Sec. 19(1) of the Act extended copyright protection to records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced for a period of 50 years from the making of the original plate. The protection of 'sound recordings' was introduced in Sec. 12 of the subsequent 1956 Copyright Act. The currently applicable protection for sound recordings is provided for under the Copyright Designs and Patents Act 1988, as amended ('CDPA' – see Sec. 1(1)(b)).

The terminology used in UK law is thus 'sound recordings' rather than 'phonograms'. According to Sec. 5A (1) CDPA, a 'sound recording' is

(a) a recording of sounds, from which the sounds may be reproduced, or

(b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced.

Unlike in most civil law traditions, the rights of phonogram producers are protected by copyright rather than related or neighbouring rights. As the copyright protection for sound recordings differs somewhat from the protection of literary, dramatic, musical and artistic works, the protection is often referred to as 'entrepreneurial copyright'.

Restricted acts are listed in Sec. 16 CDPA. In respect of sound recordings they include:

a) Reproduction

Sec. 17 CDPA grants protection against the copying of a work. Pursuant to Sec. 17(1) CDPA, the copying of a work is an act restricted by the copyright in every description of copyright work, and thus includes sound recordings.

b) Broadcasting

The broadcasting right is a restricted act as part of the communication to the public right (Sec. 20(2)(a) CDPA). The notion of 'broadcasting' was a separate restricted act prior to the implementation of Directive 2001/29/EC which led to its inclusion in the broad scope of the then newly shaped communication to the public right. The notion of broadcasting is wide and covers electronic transmissions of sounds, visual images or other information but, with few exceptions, excludes internet transmissions.[3]

c) Communication to the public

Communication to the public is a restricted act in respect of sound recordings according to Sec. 20(1)(c) CDPA and covers the communication to the public of a work by electronic transmission, including broadcasting (see above under (b) as well as the making available to the public (see below under (f)).

[3] See definition in Sec. 6 CDPA.

The right in Sec. 20 CDPA is the result of the implementation of Article 3 Directive 2001/29/EC: it incorporates the previous separate broadcasting and cable-casting rights and adds the making available right to the exhaustive catalogue of restricted acts. Thus the right is broad and conceived in a technology-neutral fashion.[4]

d) Distribution

The distribution right appears in UK law as a restricted act in respect of the issue of copies to the public of a sound recording (Sec. 18(1) CDPA).

e) Rental

The rental or lending of copies of a work to the public is an act restricted by copyright in respect of sound recordings as per Sec. 18A (1)(c) CDPA.

f) Making available to the public

The making available to the public is part of the restricted act in respect of communication to the public (Sec. 20(2)(b) CDPA). Accordingly, the right covers the 'making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them'. Thus, the right corresponds to the making available right in Article 14 WPPT and Article 3(2) Directive 2001/29/EC.

g) Cable retransmission

Cable retransmission is covered under the notion of broadcasting which itself is part of the communication to the public right in Sec. 20(2)(a) CDPA. As in the case of broadcasting, there used to be a separate cable-casting right which was replaced by the new communication to the public right when Directive 2001/29/EC was implemented into UK law.

h) Direct injection

The UK has shown no intention to implement the specific rules regarding direct injection under Directive (EU) 2019/789. However, the European Court's decision in *SBS Belgium v SABAM* (Case C-325/14) which addressed aspects of direct injection constitutes retained case law pursuant to Sec. 6(1) European Union (Withdrawal) Act 2018. Note however that the Supreme Court and the High Court of Justiciary (Scotland) together with a number of other relevant courts including the Court of Appeal in England and Wales are not bound by retained case law and may decide to depart from it.[5]

i) Any other rights?

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[4] Cf. Explanatory Notes to The Copyright and Related Rights Regulations 2003, available at https://www.legislation.gov.uk/uksi/2003/2498/note - under (a) and (b) (accessed 18 July 2022)

[5] See Sec. 6(5A) European Union (Withdrawal) Act 2018 together with the European Union (Withdrawal) Act 2018 (Relevant Court) (Retained EU Case Law) Regulations 2020 (SI 2020/1525), available at https://www.legislation.gov.uk/uksi/2020/1525/contents/made (accessed 18 July 2022)

As the notion of communication to the public only refers to transmission type uses, the CDPA provides for a restricted act in respect of the playing of a sound recording in public (Sec. 19(3)) which which essentially is a public performance right.

2) What is the nature of those rights?

The listed restricted acts are all statutory rights.

3) Which of them are exclusive/remuneration rights?

All are exclusive rights.

4) Which exceptions/limitations generate remuneration rights for phonogram producers?

Under UK law, a number of compulsory licences apply to sound recordings. In these cases, the user is allowed to use a work under certain conditions against the payment of a fee. Please note that unlike in many other jurisdictions, there is no specific private copying royalty scheme in place. With regard to sound recordings, the following are worth noting:

- Compulsory licence for broadcasting

Under the Broadcasting Act 1990 (c 42), Sections 175-6, Sch 17, a compulsory licence applies where a sound recording is to be broadcast or included in a cable programme (see also Secs. 135A – 135H CDPA).

- Orphan works licensing scheme[6]

An orphan works licence can be granted under the The Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014 where the rightholder inter alia of a sound recording is unknown or cannot be found. Such a licence applies only for use in the UK, can be for commercial or non-commercial use, is non-exclusive, lasts up to 7 years and is renewable.

According to Reg. 10, a licence fee is payable where an orphan licence is granted. Where the rightholder comes forward once the licence has been granted, he or she can make a claim to the collected remuneration. Currently there are 25 sound recordings on the orphan works register.[7]

- Exercise of the cable retransmission right

The cable retransmission right in respect of a sound recording may only be exercised through a collecting society (Sec. 144A (2) CDPA). While this is not an exception or compulsory licence per se, the exercise of the right is restricted which comes close to a limitation of the right as such.

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[6] Details regarding the orphan works licensing scheme may be found here: https://www.gov.uk/guidance/copyright-orphan-works

[7] See the list here: https://www.orphanworkslicensing.service.gov.uk/view-register/search?workCategory=Sound%20recordings&filter=0

- Lending right for audio books and e-audio books

The exclusive right in respect of lending (Sec. 18A CDPA) is subject to an exception for the benefit of public libraries under Sec. 40A CDPA and replaced with a remuneration scheme on the basis of the Public Lending Rights Act 1979 as amended.
The exception also extends to audio books and audio e-books and authors under the scheme include the producers of such sound recordings.[8]

5) Are there any legal presumptions for transfer or is it voluntary/contractual?

There are no legal presumptions with regard to the transfer of the rights of phonogram producers.

6) What type of compensation is paid in exchange? How is it set? For how long?

Unlike many civil law countries with abundant regulations on copyright contracts, UK copyright law only contains sparse rules with regard to assignments and licences in Sec. 90-93C CDPA. UK copyright law is committed to contractual freedom and compensation is a matter of negotiation.

7) How is producer's compensation determined for each business model?

See above – it is a matter of negotiation.

8) Are there minimum amounts due? Any other economic benefits?

See above – again, it is a matter of negotiation.

9) Is digital piracy/streamripping still a major concern for phonogram producers?

Digital piracy in general and stream-ripping services in particular are still a major concern for the UK music industry, including producers of sound recordings. According to a recent stream-ripping report published by PRS for Music, 22 out of the 50 most popular music only sites offering unlawful content are stream-ripping services.[9] The report further sets out that 19 out of these services are stream-ripping sites whereas 3 are stream-ripping download sites. They are followed by Cyberlocker Link sites which represent 20 out of 50 top music only sites. Conversely, a considerable decrease from previously 14 (in 2016) to six in 2020 has been reported for BitTorrent music sites.

The significance of stream-ripping was also stressed in *Young Turks Recordings and Others v BT and Others*[10] where, referring to the Claimants' evidence, the phenomenon was considered as 'one of the fastest growing forms of online infringement of copyright in sound recordings and the most prevalent'.[11]

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[8] Sec. 40A CDPA with Sec. 1(1) and Sec. 5(2) Public Lending Rights Act 1979 as amended.
[9] https://www.prsformusic.com/-/media/files/prs-for-music/research/full-stream-ripping-research-report-2020.pdf.
[10] [2021] EWHC 410 (Ch), https://bruneis.bailii.org/ew/cases/EWHC/Ch/2021/410.html
[11] Ibid., at [4].

It is worth noting that a specialised police unit, the Police Intellectual Property Crime Unit (PIPCU), was established in 2013 as part of the Economic Crime Directorate of the City of London Police to tackle inter alia the adverse effects of online digital piracy on the UK economy.[12]

10) Which rights are currently being collected via CMOs?

The rights which are typically collected by CMOs with regard to sound recordings include the following:

- Radio/TV broadcasting
- Some online broadcasting rights
- Public performance rights
- Dubbing rights (i.e. copying of recorded music for commercial services, such as background music)
- Music video rights

11) Which CMOs represent phonogram producers in your Country?

Licensing bodies in the UK can be both traditional collecting societies and licensing agents or Independent Management Entities (Sec. 116(2) CDPA).

The collecting society which traditionally administers the rights of producers of sound recordings in the UK is PPL (https://www.ppluk.com/). Music Video Licensing is carried out by VPL.

12) Do these CMOs comply with transparency principles?

Under the Collective Management of Copyright (EU Directive) Regulations 2016, CMOs have transparency obligations vis-à-vis rightholders, users, the general public and other CMOs whose rights they represent (Reg. 17-20). They are also obliged to present an annual transparency report (Reg. 21). IMEs have transparency obligations vis-à-vis rightholders, users and the general public (Reg. 17, 19 and 20).

13) Is it possible to find out how much income is provided by each type of rights?

The income for each type of rights administered by PPL may be found in their transparency report which is available on their website: https://www.ppluk.com/about-us/reports-and-statements/

14) What is the current litigation level for phonogram producers in your Country?

No information available.

15) Are there any relevant Court Decisions concerning phonogram producer's rights?

There is abundant case law concerning the rights of phonogram producers, particularly in the area of enforcement, notably with regard to the rights under Sec. 20 CDPA. The recording industry has

[12] For further information see here: https://www.cityoflondon.police.uk/SysSiteAssets/media/images/city-of-london/about-us/pipcu/pipcu-referral-guide.pdf

successfully brought multiple actions to block access to infringing sites on the basis of Sec. 97A CDPA, the implementation of Article 8(3) Directive 2001/29/EC. Examples include *Dramatico Entertainment Ltd v British Sky Broadcasting*[13] regarding access to the PirateBay; *EMI Records Ltd v British Sky Broadcasting Ltd*[14] regarding access to P2P sharing sites KAT, H33T and Fenopy; *1967 Ltd v British Sky Broadcasting*[15] regarding access to 21 Target Websites; *Capitol Records v BT*[16] regarding cyberlockers and *Young Turks Recordings and Others v BT and Others*[17] with regard to stream-ripping sites/app operators (see also above under Question 9).

Another recent noteworthy case is *Warner Music and Others v TuneIn*[18] concerning an internet radio service enabling users to access radio stations around the world. The Court of Appeal confirmed that TuneIn's activities constitute an infringement of copyright in sound recordings under Sec. 20 CDPA. The judgment also contains a detailed discussion as to whether the Court of Appeal should deviate from the case law of the European Court of Justice which informs the notion of 'communication to the public' under UK law. The Court concluded that there was no reason for the time being to deviate from the existing interpretation of the concept of communication to the public. TuneIn's subsequent request for permission to appeal was refused by the Supreme Court, considering that the application did not raise an arguable point of law.[19]

16) Are there any revocation of transfer of rights' agreements provisions?

Unlike many copyright laws in civil law traditions, the UK CDPA does not provide for a revocation right where rights of producers have been transferred. Instead, a correction of unfair contractual arrangements can occur on the basis of two general doctrines which were developed by the courts, namely undue influence and restraint of trade. They have been employed most often with regard to contracts concluded by publishers or record labels with composers, songwriters and/or performers.

The doctrine of undue influence encompasses scenarios where a person in a dominant position has used that position to obtain an unfair advantage and thus caused injury to the person relying on that person's authority. However, for an agreement to be set aside, it must be manifestly disadvantageous. This doctrine has been successfully used in *Elton John v James.*[20]

Under the doctrine of restraint of trade, contracts that restrict the right to practise a trade are acceptable only where reasonably required to protect the legitimate interest of the promise. This doctrine has been used to challenge recording contracts of long duration and with one-sided clauses, e.g. in *Schroeder Music Publishing v Macaulay*[21] and *ZTT v Holly Johnson*[22]. In *Panayiotou v Sony Music Entertainment*[23], generally

[13] [2012] EWHC 268 (Ch).
[14] [2013] EWHC 379 (Ch).
[15] [2014] EWHC 3444 (Ch).
[16] [2021] EWHC 409 (Ch).
[17] [2021] EWHC 410 (Ch).
[18] [2021[EWCA Civ 441; [2019] EWHC 2923 (Ch).
[19] UKSC 2021/0096 – 4 April 2022.
[20] [1994] FSR 397.
[21] [1974] 1 WLR 1308.
[22] [1993] EMLR 61.
[23] [1994] EMLR 229.

known as the George Michael case, the restraint of the contract was held to be reasonable for a variety of reasons including the generous remuneration following an earlier renegotiation.

17) What is considered a "phonogram published for commercial purposes"?

The reference is to 'commercially published sound recordings' (Sec. 182D CDPA). There is no specific definition of 'commercially published', but Sec. 182D (1A) CDPA clarifies that 'the publication of a sound recording includes making it available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them'. In essence, this reflects the definition of 'phonograms published for commercial purposes' under Article 15(4) WPPT.

18) Is there any type of phonograms that is published for non-commercial purposes?

Such phonograms may include recordings which were made by broadcasting organisations of their broadcast programmes for inclusion in their archives.

19) Which rights are involved in audiovisual synchronization ("production music")?

A synchronisation right comes into play when combining an existing sound recording with audiovisual elements. Sync licences are usually granted by the record label.

20) Which rights are involved in mood music/sound branding licensing?

The answer depends on how such music is to be used exactly. The rights in respect of reproduction, communication to the public, distribution or public performance may come into play depending on the scenario.

PANEL III- BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS

1- Which rights are awarded to broadcasters in your Country?

a) Fixation; Yes

b) Reproduction; Yes

c) Communication to the public (with /without admission fees); Yes

d) Distribution; Yes

e) Simultaneous retransmission by wire or wireless means; Yes

f) Deferred retransmission by wire or wireless means; Yes

g) Making available to the public by wire or wireless means; Yes

h) Pre-broadcast program carrying signal protection; Yes

i) Any other rights? Playing or showing a broadcast in public

2- What is the nature of those rights? – Statutory

3- Which of them are exclusive/remuneration rights? All

exclusive

4- Which exceptions/limitations generate remuneration rights for broadcasters?
None

5- Are there any legal presumptions of transfer or is it voluntary/contractual?
No presumptions of transfer

6- What is the relevance of copyright infringement in relation to broadcasters' rights? Highly relevant

7- Is digital piracy/streamripping still a major concern for broadcasters?
Yes

8- Do UGC platforms contribute to broadcasters' rights? No How?

9- What is the current litigation level for broadcasters' rights in your Country? Low

10- Are there any relevant Court Decisions concerning broadcasters' rights in your Country?

11- Are broadcasters acting as One-Stop Shop in relation to retransmission operators?
No

12- Which rights are awarded to audiovisual producers in your Country?

a) Reproduction; Yes

b) Broadcasting; Yes

c) Communication to the public; Yes

d) Distribution; Yes

e) Rental; Yes

f) Making available to the public; Yes

g) Retransmission; Yes

h) Direct Injection; Yes, though not is specific terms

i) Any other rights? No

13- What is the nature of those rights? – Statutory

14- Which of them are exclusive rights? Which of them are remuneration rights? All exclusive

15- Which exceptions/limitations generate remuneration rights for audiovisual producers?
None

16- Which rights are transferred to audiovisual producers? None

17- Are there any legal presumptions of transfer towards audiovisual producers?
No

18- What type of compensation is paid in exchange? Not applicable

19 - How is audiovisual producer's compensation determined for each business model? By negotiation

20- Are there minimum amounts due? Any other economic benefits? No

21- Do UGC platforms contribute to such compensation schemes? No

22- Is digital piracy/streamripping still a major concern for audiovisual producers? Yes

23- What is the most recent estimation of rights' loss on account of digital piracy in your Country?

24- What is the current rule in terms of audiovisual exploitation windows in your Country?

25- Which CMOs represent audiovisual producers in your Country?

26- Do these CMOs comply with transparency principles?

27- Is it possible to find out how much income is provided by each type of rights?

28- What is the current litigation level for audiovisual producers' rights in your Country?

29- Are there any relevant Court Decisions concerning audiovisual producer's rights?

29- Are audiovisual producers acting as One-Stop Shop in relation to retransmission operators?

PANEL IV - DATABASE PRODUCERS' AND PUBLISHERS' RIGHTS

Note: As noted above, post-Brexit, the law contained in EU Directive 96/9/EC on the legal protection of databases continues in force, as implemented into the UK Copyright and Rights in Databases Regulations 1997[24], with an amendment to make them refer to the UK rather than to the EEA[25]. This means that CJEU decisions such as C-304/07 *Directmedia*, C-203/02 *British Horseracing Board*; C-46/02 *Fixtures Marketing* continue to be cited as relevant authority.

By way of illustration to the responses, some key or recent UK cases are cited. As UK law follows a doctrine of precedent, these decisions refer in turn to earlier decisions (of domestic and EU courts).

1. Are Databases legally protected in your Country? How?

   Yes. Databases are protected by (1) copyright and (2) sui generis rights.

   A database is defined as a collection of independent works, data or other materials which are (a) arranged in a systematic or methodical way, and (b) individually accessible by electronic or other means. [26]

   Copyright will protect the selection or arrangement of the contents of a database (its structure, rather than its contents), provided it is sufficiently original. A database is original if by reason of the selection or arrangement of the contents of the database the database constitutes the author's own intellectual creation. See sections 1(1)(a), 3(1)(d) and 3A of the Copyright, Designs and Patents Act 1988 ("CDPA").

   Broadly, the database owner can prevent copying of the structure of a copyright-protected database.

   Sui generis database rights will protect the investment[27] made in a database where the maker has

[24] SI 1997/3032. These Regulations are in the form of a Statutory Instrument (SI), secondary or delegated legislation. Very often, UK courts and commentators refer to the provisions of the underlying Directive rather than the provisions of the Regulations; this makes it easier to apply decisions of the Court of Justice fo the EU.
[25] Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2018 (SI 2019/605) (Brexit Database Regulations)
[26] No particular format is required as long as these criteria are met. For example, in *Technomed v Bluecrest Health Screening* [2017] EWHC 2142 pdf and XML documentation regarding an electrocardiogram analysis and reporting system were protected by copyright and database right.
[27] This represents what the database right is designed to protect: 77M Ltd v Ordnance Survey Ltd [2019] EWHC

made a substantial investment, whether human, financial or technical, in obtaining, verifying or presenting the contents of the database[28]. See article 7(1) of the Database Directive 96/9/EC.

Under the Sui generis right, the database owner can prevent (1) extraction and/or reutilisation of the whole or a substantial part of the contents of the database[29], and/or (2) repeated and systematic extraction and/or reutilisation of insubstantial parts of the database contents where this: conflicts with the normal exploitation of the database, or, unreasonably prejudices the database owner's legitimate interests. See articles 7(1) and 7(5) of the Database Directive 96/9/EC.

A database can also be protected contractually by entering into contractual terms with a party whereby use of the database and/or its contents are restricted.

2. Is there a *Sui Generis* Database producers' right or equivalent protection in your Country?

   Yes. See above.

3. Is it possible to evaluate its efficiency and level of enforcement?

   It can be an effective right when the facts are straight-forward (e.g. a database has been taken and re-used by an ex-employee), but there remains areas of uncertainty over the scope of the right. The EU Commission concluded in its Final Report of the Study in support of the Evaluation of the Database Directive in 2018 that "The effect of the sui generis right on the production of databases remains unproven as the economic evidence, albeit scarce, is inconclusive."

4. Is there any different form of protection for Database producers or for ownership of data?

   The contents of a database could be protected as copyright works, depending on the nature of those contents. However, the database producer would need to own or have a sufficient licence to enforce the copyright in those contents, in order to prevent third parties copying those contents. For example, if the contents were webpages or photographs, those contents would likely be protected as copyright works. Accordingly, if a third party were to scrape and copy those contents, they may be liable for copyright infringement.

   If the contents of the database are kept from being public and amount to confidential information, the database owner could prevent unlawful disclosures without the owner's permission. This would not work if the database is accessible to the public, but may be effective if the database is disclosed under a confidentiality agreement with a third party.

   Database producers of publically available databases could also attempt to subject their database to terms and conditions purporting to restrict the use that can be made of the database and/or its contents. However, there is no clear authority in the UK on the binding nature of website terms of use which restrict web crawling and scraping.

   In *Racing Partnership v Sports Information Services*,[30] Court of Appeal judges were divided on whether an obligation of confidence existed (as required in an action for breach of confidence) but appeared to agree that some, but not all, raceday information had the necessary quality of confidence, the key being inaccessibility. There were also findings of breach of contract and

3007 (Ch)

[28] But not creating the information, eg *Football Dataco v Brittens Pools [*2010] EWHC 841 (Ch)

[29] Eg *Football Dataco v Sportradar* [2013] EWCA Civ 27, applied in *DRSP Holdings v O'Connor* [2021] EWHC 626 (Ch)

[30] [2020] EWCA Civ 1300

conspiracy to injure by unlawful means. Leave was granted on 12 May 2022 to appeal to the Supreme Court, whose decision will be of great interest.

5. How does it work? Is it effective?

   How each works is explained above.

6. How do the courts of your Country balance the *sui generis* right with freedom of information and freedom of competition?

   Regarding freedom of competition, the sui generis right should actually prevent unfair competition whereby a person benefits from the investment made in a database by another person[31]. If a resultant product does not compete with the database owner's product it may prevent a finding of infringement of the sui generis right, as was established in the decision from the Court of Justice of the EU in *CV-Online Latvia SIA v Melons SIA* (C-762/19).

   Regarding freedom of information, the UK's Intellectual Property office has stated an intention to introduce a new text and data mining exception for copyright and sui generis rights in databases, which would allow text and data mining for any purpose.[32]

7. Is the *sui generis right* protected against circumvention of TPM designed for controlling access?

   Yes, under section 296ZA CDPA a civil right of action can be brought against anyone who circumvents TPMs to access a database, provided that person has knowledge, or has reasonable grounds for knowledge, that he/she is pursuing that objective.

8. Is there a special protection against online uses of press publications in your Country?

   The UK has elected not to implement Directive (EU) 2019/790 on copyright and related rights in the digital single market, so it will not be implementing Article 15 (Protection of press publications concerning online uses).

There is copyright on the typographical arrangement of published editions under section 1(1)(c) CDPA, but the scope of this right has been interpreted narrowly.[33]

9. Does it apply to scientific journals and hyperlinks? How does it work?

   n/a as there is no special protection against online uses of press publications.

   For copyright generally, EU caselaw on linking and hyperlinking is likely to be followed (see above)

   As regards scientific journals, there has long been a general copyright exception enabling use and re-distribution of scientific abstracts of journal articles, insofar as a licensing scheme is not available.[34]

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[31] Eg by using the data to set up a rival network of clinics in *Health & Case Management v Physiotherapy Network* [2018] EWHC 869 (QB)

[32] See https://www.gov.uk/government/consultations/artificial-intelligence-and-ip-copyright-and-patents

[33] *Newspaper Licensing Agency Limited v. Marks and Spencer Plc* [2001] UKHL 38.

[34] Section 60 CDPA.