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COPYRIGHT, NEIGHBOURING AND SPECIAL RIGHTS

National report for Belgium

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INTRODUCTION

0.1. The concept of 'neighbouring rights' has been **introduced** into Belgian law by the Copyright and Neighbouring Rights Act of 30 June 1994.

The objective of the Belgian legislator was to create a **parallelism** between copyright and neighbouring rights (see preparatory works of the 1994 Copyright Act, *Doc.* Senate, E.S., 1988, 329.1, p. 8).

In 2014, Belgian legislation with regard to copyright and neighbouring rights has been codified in **Book XI "*intellectual property and trade secrets*" of the Code of economic law (hereafter "CEL"**).

The CEL **provides for the transposition of the following directives**:

1° Council Directive 93/83/EEC of 27 September 1993 coordinating certain regulations concerning copyright and rights related to copyright in the field of satellite broadcasting and cable retransmission;

2° Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases;

3° Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society;

4° Directive 2001/84/EC of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art;

5° Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right, lending right and certain related rights in the field of intellectual property;

6° Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights;

7° Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works;

8° Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on the collective management of copyright and related rights and the multi-territorial licensing of rights in musical works for their online use in the internal market;

9° Directive 2017/1564/EU of the European Parliament and of the Council of 13 September 2017 on certain permitted uses of certain works and other subject-matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print disabled, and amending Directive 2001/29/EC on the harmonization of certain aspects of copyright and related rights in the information society;

10° Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online broadcasts by broadcasting organizations and retransmissions of television and radio programs and amending Council Directive 93/83/EEC;

11° Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (art. XI.164 CEL).

The last transposition dates from 19 June 2022 (the Belgian transposition Act has been published in the official *Belgian Gazette* of 1 August 2022).

0.2. Art. XI.203, al. 1 CLE provides that: "*The provisions of this chapter (Neighbouring rights) are without prejudice to copyright. None of these provisions should be construed as restricting the* ***exercise*** *of copyright*". Notwithstanding the well-known discussions on the possibility to insert the term "exercise" in similar provisions of international treaties such as the Rome Convention and of Directive 2006/115 (each time resulted in a rejection of the suggested insertion), the term appears in the Belgian legislation in 1994. However, Belgian courts never accepted to interpret this in favour of a hierarchy or supremacy of copyright (see e.g. Brussels Court of Appeal (8th ch.), 22 May 1996, *A&M*, 1997, p. 178 obs. A. Strowel, and Brussels Court of Appeal (8th ch.), 18 June 1996*, A&M*, 1997, p. 60).

Belgian case law also ruled that:

- There is no hierarchy/supremacy between the neighbouring rights (Mons Court of Appeal (12th ch.), 13 May 2022, *A&M*, 2002, p. 421); and

- Copyright and/or neighbouring rights can be cumulated in one person (Brussels Court of Appeal (8th ch.), 22 May 1996, *A&M*, 1997, p. 183).

0.3. Art. XI.203, al. 2 CLE also provides that: "The neighbouring rights recognized in this chapter are movable rights that pass by succession and are subject to full or partial

transfer, in accordance with the provisions of the Civil Code. Among other things, they may be disposed of or placed under a common or exclusive license". The **transferability** is a general rule, subject to several specific rules as explained in the following part.

0.4. Please note that there is no official translation of Book XI of the CEL into English. Therefore, we refer our readers to the **official texts in Dutch, French and German**:

Dutch:
https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=nl&la=N&cn=2013022819&table_name=wet

French:
https://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=2013022819&table_name=loi

German:
https://www.ejustice.just.fgov.be/eli/wet/2013/02/28/2013000376/staatsblad

PANEL I – PERFORMER'S RIGHTS

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

1. Belgian law does not provide for a definition for 'performer'. Case law and legal doctrine therefore apply the definition of art. 3 of the 1961 International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations ("Rome Convention").

However, article XI.205 §1, 5 CEL explicitly includes variety and circus performers and excludes *additional artists* who are recognized as such according to professional practice.

2. While not making a distinction between types of *performers*, Belgian legislation does make a distinction between *performances* that were fixed on a phonogram and performances in audio-visual fixations. This both in the nature of the rights that are granted and in the term of protection.

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

3. Yes, but with the important footnote (see nr. 2) that both in the nature of the rights that are granted and in the term of protection, a distinction is made between performances that were fixed on a phonogram and performances in audio-visual fixations.

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

4. No, in granting rights the Belgian legislation does not make any distinction between featured and non-featured performers.

There are however two clauses in the Belgian law that introduce a specific category of performers.

- Article XI.205 §1, 5 CEL explicitly excludes *additional artists* from the protection of neighbouring rights, without providing a legal definition (see nr. 2).

- Articles XI.205/2 and XI.205/4 CEL, implementing resp. articles 19 (transparency obligation) and 22 (right of revocation) of directive 2019/790 explicitly exclude the performer from these rights *where his/her contribution is not significant, given the totality of the work or performances* (art.XI.205/2(3) CEL) or *where the individual contribution of the performing artist, who wishes to exercise the right of revocation, is of relative importance* (art.205 (4) 2° CEL).

In its opinion on the draft Act transposing Directive 2019/790, the Belgian Council of State assessed these provisions as 'vague' and made a recommendation - for the sake of legal certainty – to include examples of relative or non-relative contributions in the

explanatory memorandum of the article. In the final text, however, no such examples were included.

It cannot be deduced from anything that these terms indicate the distinction between featured and non-featured performers.

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

5. The CEL grants performers with moral and economic rights both on fixed and unfixed performances.

6. All economic rights are initially granted as exclusive rights. Article XI.205 CEL grants performers with the exclusive rights on reproduction, renting, lending, communication to the public (including explicitly making available) and distribution.

Although part of the right to communication to the public, the CEL explicitly (in a separate provision) grants performers the right to authorize the (cable) retransmission of their performances (art.XI.223 CEL) as well as the right to authorize the communication to the public via direct injection of their performances (art.XI.226 CEL).

7. For certain forms of exploitation, these exclusive rights are limited to or supplemented by a remuneration right, the most important of which are:

Exclusive rights limited to a remuneration right

In accordance with the provisions on authors, performers' exclusive rights are limited by a remuneration right in the following situations:

- Article XI.217, 7° CEL limits the exclusive reproduction right of performers for what concerns the act of **private copying**. Article XI.229 CEL grants performers with a remuneration right for private copying. The right to such remuneration is non-transferable (art.XI.234 §1 (4) CEL). For the collection and distribution of this remuneration, collective management is mandatory and the CEL provides for mandatory distribution key (see table under nr. 27).

- Article XI.217/1, 1°, 3) and 4° limit the performers' exclusive rights to reproduction and communication to the public for the **use for the benefit of education and scientific research**. For these acts, permission from the performer (nor the producer) is not needed. Article XI.240 (3) CEL offers performers (and producers) a right to be remunerated for such use. The remuneration right granted to performers is non-transferable (Art.XI.245 §3 (2) CEL). For the collection and distribution of this remuneration, collective management is mandatory and the CEL provides for a mandatory distribution key (see table under nr. 27).

- Article XI.218 CEL limits the exclusive right of performers (and producers) for the **lending** of phonograms or first fixations of films when such lending is made for an educational or cultural purpose by institutions officially recognized or established for that purpose by the government. For this lending, permission from the performer (nor the producer) is not needed. Article XI.243 CEL offers performers (and producers) a right to be remunerated for such lending. The remuneration right granted to performers is non-transferable (Art.XI.242 (6) CEL). For the collection and distribution of this remuneration, collective management is mandatory and the CEL provides for a mandatory distribution key (see table under nr. 27).

In addition, the exclusive right on communication to the public of performers is limited to a remuneration right in the following situation:

- Article XI.212 CEL limits the exclusive right on communication to the public granted to performances fixed on phonograms (and phonogram producers) for what concerns the acts of **public performance** and **broadcasting**. For these acts, permission from the performer (or the producer) is not needed. Article XI.213 CEL grants performers whose performances are fixed on phonograms (and phonogram producers) with a right to equitable remuneration for a public performance or broadcasting of the phonogram. The equitable remuneration granted to performers is non-transferable (Art.XI.214 (2) CEL). For the collection and distribution of this remuneration, collective management is mandatory and the CEL provides for a mandatory distribution key (see table under nr. 27).

From 1994 to 2018, the scope of this remuneration right included the public performance and broadcasting of audio-visual performances. Unlike performances fixed on phonograms, this provision was never converted into a practice of collecting a similar equitable remuneration from television broadcasters and was abolished by the Act of 25 November 2018 amending Book I "Definitions" and Book XI "Intellectual Property" of the CEL relating to the audio-visual sector.

<u>Exclusive right supplemented with a remuneration right</u>

In accordance with the provisions on authors, performers retain a remuneration right when transferring an exclusive right in the following situations:

- Article XI.211 CEL grants performers that license or transfer their right to permit **renting**, with an unwaivable and non-transferable right to remuneration for the renting.

- Article XI.225 CEL provides that the performer that has transferred the right to allow the (**cable) retransmission**, retains a right to be remunerated for the act of (cable) retransmission. This right is unwaivable and non-transferrable and can only be exercised by a collective management organisation representing performers. The remuneration is to be collected directly with the cable-distributors.

- Article XI.227/1 CEL provides that the performer that has transferred the right to allow the **communication to the public via direct injection**, retains a right to be remunerated for the act of communication to the public via direct injection. This right is unwaivable and non-transferrable and can only be exercised by a collective management organisation representing performers. The remuneration is to be collected directly with the broadcasters and signal distributors.

- Article XI.228/4. §1 CEL provides that where a performer has assigned his right to authorize or prohibit **communication to the public by an online content-sharing service provider** (OCSSP), he retains the right to obtain remuneration in respect of the communication to the public by an OCSSP. This right is unwaivable and non-transferrable and can only be exercised by a collective management organisation representing performers. The remuneration is to be collected directly with the OCSSP.

- Art. XI.228/11. §1 CEL provides that where a performer of an audio or audio-visual work has assigned his right to authorise or prohibit communication to the public, including **making available to the public, by an online streaming service** (as defined by Article XI.228/10 CEL) to a producer, he retains the right to obtain remuneration for the communication to the public by such online streaming service. This right is unwaivable and non-transferrable and shall, in the absence of a collective agreement, be exercised by a collective management organisation representing performers.

In addition, a specific performer only remuneration right exists in the following situation:

- Article XI.210 §2 CEL provides that where a performer whose performance is fixed in a phonogram is paid a non-periodic remuneration (buy out) for the transfer of his exclusive rights for the reproduction, distribution and making available, that performer is entitled to an **annual supplementary remuneration** for each full year immediately following the 50th year after the phonogram has been lawfully published or, if the phonogram has not been lawfully published, the 50th year after it has been lawfully communicated to the public. This right in unwaivable and can only be exercised by a collective management organisation representing performers.

I. Live performances:

a) Fixation

8. NO. The Belgian CEL does not explicitly grant performers with an exclusive right on the fixation of their live performances. However, it is commonly accepted by case law and doctrine that this is included in the exclusive rights on reproduction granted by article 205 §1 (1) CEL (see nrs. 6 and 7).

b) Broadcasting

9. NO. The Belgian CEL does not explicitly grant performers with an exclusive right on the broadcasting of their live performances. However, it is commonly accepted by case law and doctrine that this is included in the exclusive right on communication to the public granted by art.XI.205 §1 (3) CEL (see nrs. 6 and 7).

10. It should be noted that in Belgium the rights assigned to live performances are not limited to fixation and broadcasting. As a result of the fact that the right to broadcasting is granted as part of a broader right to communication to the public, the provisions on (cable) retransmission, communication to the public via direct injection and the use by online content-sharing service providers also apply to unfixed performances.

II. Fixed performances:

c) Reproduction

11. YES. Article 205 §1 (1) CEL grants performers the exclusive rights on reproduction (see nrs. 6 and 7).

d) Distribution

12. YES. Article 205 §1 (4) CEL grants performers the exclusive rights on distribution (see nrs. 6 and 7).

e) Rental

13. YES. Article 205 §1 (2) CEL grants performers the exclusive rights on rental. Article XI.211 CEL grants performers that license or transfer their right to permit renting, with an unwaivable and non-transferable right to remuneration for the renting (see nrs. 6 and 7).

f) Making Available to the public

14. YES. Article 205 §1 (3) CEL grants performers the exclusive rights on making available as part of the right to communication to the public. Art. XI.228/11. §1 CEL provides that where a performer of an audio or audio-visual work has assigned his right to authorise or prohibit communication to the public, including making available to the public, by an online streaming service (as defined by Article XI.228/10 CEL) to a producer, he retains the right to obtain remuneration for the communication to the public by such online streaming service. This right is unwaivable and non-transferrable and shall, in the absence of a collective agreement, be exercised by a collective management organisation representing performers (see nrs. 6 and 7).

g) Communication to the Public

15. YES. Article 205 §1 (3) CEL grants performers the exclusive rights on communication to the public, including the right to making available. Article XI.228/4. §1 CEL provides that where a performer has assigned his right to authorize or prohibit communication to the public by an online content-sharing service provider (OCSSP), he retains the right to obtain remuneration in respect of the communication to the public by an OCSSP. This right is unwaivable and non-transferrable and can only be exercised by a collective management organisation representing performers. The remuneration is to be collected directly with the OCSSP (see nrs. 6 and 7).

h) Public performance

16. YES. Article 205 §1 (3) CEL grants performers the exclusive rights on communication to the public, including public performance. For performances fixed on phonograms, this right is reduced to a remuneration right by articles XI.212 to XI.214 CEL (see nrs. 6 and 7).

i) Broadcasting

17. YES. Article 205 §1 (3) CEL grants performers the exclusive rights on communication to the public, including broadcasting. For performances fixed on phonograms, this right is reduced to a remuneration right by articles XI.212 to XI.214 CEL (see nrs. 6 and 7).

j) Retransmission

18. YES. Article 205 §1 (3) CEL grants performers the exclusive rights on communication to the public, including (cable) retransmission. Article XI.225 CEL provides that the performer that has transferred the right to allow the (cable) retransmission, retains a right to be remunerated for the act of (cable) retransmission. This right is unwaivable and non-transferrable and can only be exercised by a collective management organisation representing performers. The remuneration is to be collected directly with the cable-distributors (see nrs. 6 and 7).

k) Direct Injection

19. YES. Article 205 §1 (3) CEL grants performers the exclusive rights on communication to the public, including the communication to the public via direct injection. Article XI.227/1 CEL provides that the performer that has transferred the right to allow the communication to the public via direct injection, retains a right to be remunerated for the act of communication to the public via direct injection. This right is unwaivable and non-transferrable and can only be exercised by a collective management organisation representing performers. The remuneration is to be collected directly with the broadcasters and signal distributors (see nrs. 6 and 7).

III. Any other rights?

20. YES. Article 205 §1 (2) CEL grants performers the exclusive rights on lending. Article XI.218 CEL limits this exclusive right of performers (and producers) for the lending of phonograms or first fixations of films when such lending is made for an educational or cultural purpose by institutions officially recognized or established for that purpose by the government. For this lending, permission from the performer (nor the producer) is not needed. Article XI.243 CEL offers performers (and producers) a right to be remunerated for such lending. The remuneration right granted to performers is non-transferable (Art.XI.242 (6) CEL). For the collection and distribution of this remuneration, collective management is mandatory.

IV. Are moral rights attributed to performers? Which prerogatives does it comprehend?

21. YES. Article XI.204 CEL provides performers with an unwaivable moral right on their performance. This moral right consists of:

- The right to attribution
- The right to object to any deformation, mutilation or other alteration of his performance

This right can be specified by means of a contract, but the global waiver of the future exercise of that right is null and void.

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

22. See nrs. 5 to 21. All neighbouring rights for performers are statutory, they are exclusively granted by law. Contracts can never attribute a performer a neighbouring right. Individual or collective bargained agreements can however include arrangements on the modalities of exercising those rights.

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

23. See nrs. 5 to 19. All economic rights are initially granted as exclusive rights. For certain forms of exploitation, these exclusive rights are limited to or supplemented by a remuneration right.

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

24. See nr. 7. In Belgium the following exceptions/limitations generate remuneration rights for performers.

- Public performance and broadcasting of phonograms (limitation of the exclusive right to communication to the public).
- Private copying (exception to the exclusive reproduction right).

- Public lending (exception to the exclusive distribution right).

- Exception for the use for the benefit of education and scientific research (exception to the exclusive reproduction right and the right to communication to the public).

In addition to the above-mentioned remuneration rights, which originate in an exception to or a limitation of an exclusive right granted, the CEL also provides specific remuneration rights that result from the transfer of the exclusive right to allow a certain form of exploitation.

- Rental
- (Cable) retransmission
- Direct injection
- Making available by online streaming platforms
- Communication to the public by online content-sharing service providers
- Reproduction, distribution and making available of phonograms older than 50 years.

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

25. All exclusive rights can be transferred by contract and (see nr. 26) in some cases, as the result of a presumption of transfer. The contract determines the term of the transfer. There is no legal limitation on the duration of the transfer.

Moral rights are explicitly made non-transferable and cannot be waved in a global manner.

With the exception of the annual supplementary remuneration (see nr. 7), all remuneration rights are non-transferable (see nr. 27), regardless of whether they stem from an exception/limitation or the transfer of an exclusive right (see nr. 24). The law always specifies whether these provisions are mandatory law or not and whether collective management is mandatory.

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

26. YES. Article XI.206 CEL provides for a presumption of transfer of a performer's exclusive right of audiovisual exploitation of his performance, including the rights necessary for this exploitation, such as the right to subtitle or dub the work.

10. Are there any unwaivable and inalienable remuneration rights?

27. YES. With the exception of the annual supplementary remuneration (see nr. 7), all remuneration rights are non-transferable (inalienable).

- Remuneration rights granted by law upon the transfer of an exclusive right are all explicitly made unwaivable.

- Remuneration rights that result from a legal exception to or limitation of an exclusive right are not explicitly made unwaivable. This does however not mean that these remuneration rights are waivable in practice. The combination of the lack of the right holder's ability to give consent (permission is in all these situations given by law) and the obligation of collective management makes any individual exercise of the right impossible. The rightholder has the choice of whether or not to 'participate' in the collective management, but this individual choice has no impact on the hight of the remuneration that users have to pay (which in all these cases is determined by the government).

Performer remuneration right	Non-transferable	Unwaivable	Mandatory Collective Management	Mandatory distribution key
Equitable remuneration for public performance and broadcasting of phonograms.	YES	NO*	YES	50% PE 50% PP
Remuneration for private copying.	YES	NO*	YES	1/3 AU 1/3 PR 1/3 PE
Remuneration for public lending.	YES	NO*	YES	1/3 AU 1/3 PR 1/3 PE
Remuneration right for the use for the benefit of education and scientific research.	YES	NO*	YES	1/3 AU 1/3 PR 1/3 PE
Remuneration right for rental.	YES	YES	NO	NO
Remuneration right for (cable) retransmission.	YES	YES	YES**	NO
Remuneration right for communication to the public by means of direct injection.	YES	YES	YES**	NO
Remuneration right for the making available by online streaming platforms.	YES	YES	NO***	NO
Remuneration right for the communication to the public by online content-sharing service providers.	YES	YES	YES**	NO

Annual supplementary remuneration right for the exploitation of phonograms older than 50 years.	NO	YES	YES**	NO

Index: PE = Performer; PR = Producer (phonogram and audiovisual; PP= phonogram producer; AU = author.
*In this situation, the combination of a non-transferable remuneration right, mandatory collective management and a mandatory legal distribution key, has made the explicit mention of the unwaivable character superfluous. The consequences of any renunciation are limited to the individual performer's choice whether or not to receive a remuneration from his/her CMO.
**In this situation, the CEL explicitly specifies that for what concerns the remuneration right authors and performers are entitled to can only be managed by a CMO that represents resp. authors or performers.
*** In this situation, collective management is only made mandatory under the condition a collectively bargained agreement is missing, in which case management by the own management company is also explicitly required.

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

28. See nr. 27. Remuneration rights that result from a legal exception to or limitation of an exclusive right are characterized by the fact that users do not require permission from any right holder. The use is permitted by law, but the law itself provides for a compensation mechanism, whereby the modalities and the amount of the remuneration are determined by legislation. For this type of remuneration right, collective management is always made mandatory.

For remuneration rights that result from the transfer of an exclusive right, the modalities and the amount of the remuneration are the result of negotiations between the performer or his collective management organisation and the party that is obliged to pay the remuneration. This is with the exception of the annual supplementary remuneration (ASR), for which the terms and the amount of the remuneration are laid down by law.

With the exception of the ASR and the remuneration right for rental, the party obliged to pay is the end-user. For the ASR and the remuneration right for rental, this is the producer to whom the exclusive right has been transferred.

With the exception of the remuneration right for rental and the remuneration right for the making available by online streaming platforms, collective management has been made mandatory for all remuneration rights that result from the transfer of an exclusive right. For the remuneration right for the making available by online streaming platforms, however, collective management is mandatory in the absence of a collectively bargained agreement determining the modalities and amount of the remuneration.

12. How is “streaming” qualified in your Country for rights awarding purposes?

29. Streaming as such is not qualified by the Belgian legislation on copyright and related rights. Indirectly is however qualified as an act of communication to the public. This can be deducted from the wordings of articles XI.228/3 CEL and XI.228/10 CEL.

- Article XI.228/10 CEL explicitly refers to the communication to the public, including making available to the public, by a streaming service provider.

- Article XI.228/3 CEL identifies the activity of an online content-sharing service provider as an act of communication to the public, including making available to the public.

Article XI.228/4 however only refers to the communication to the public by a online content-sharing service provider.

13. Whose authorization is required for the “streaming” of music/audiovisual content?

30. Without prejudice to the rights of the author(s), according to the articles XI.228/3 CEL and XI.228/11 CEL authorisation is required from the holder of the exclusive (neighbouring) right(s) on communication to the public, including making available to the public, as granted by the articles XI.205 §1 (3) CEL (performers), XI.209 §1 (4) CEL (producers) and XI.215 §1 CEL (broadcasting organisations).

14. What is the estimated level of copyright infringement in your Country?

31. Impossible to answer this question with a number. For performers, such infringement can also take many forms. It can concern piracy, an infringement of the performer's moral rights, the refusal of a user to pay a legally required remuneration, the imposition by a producer of a contract that does not comply with all legal obligations, etc.

15. What is the current level of disclosure on economic returns from digital platforms?

32. Such disclosure is currently absent.

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

33. Impossible to answer this question. The number of existing business models is unlimited.

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

34. For what concerns the remuneration for the license or transfer of neighbouring rights of performers, no legal minimum amounts are due, nor do such minimums exist at the level of collectively bargained agreements between producers/broadcasters and performers unions.

In cases where the remuneration is determined by Royal Decree (for instance private copy, equitable remuneration for public performance), the tariffs often include minimum amounts.

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

35. YES. The direct contribution by UGC platforms to the remuneration of performers is guaranteed by article XI.228/11. §1 CEL which provides that where a performer of an audio or audio-visual work has assigned his right to authorise or prohibit communication to the public, including making available to the public, by an online streaming service (as defined by Article XI.228/10 CEL) to a producer, he **retains the right to obtain remuneration for the communication to the public by such online streaming service**. This right is unwaivable and non-transferrable and shall, in the absence of a collective agreement, be exercised by a collective management organisation representing performers (see nrs. 6 and 7).

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

36. NO. However, current Belgian legislation already provides audio-visual performances with all the moral rights and exclusive economic rights included in the Beijing Treaty (see nrs. 6 and 7).

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

37. See nrs. 24, 27 and 28. PlayRight, the Belgian collective management organisation for performers (all types) manages all remuneration rights granted to performers.

By law, PlayRight's collective management is not limited to these compensation rights. In theory, the management of exclusive rights is also possible and the current affiliation form with PlayRight contains the possibility to include this in the mandate. However, these rights are often already transferred to producers, which often makes collective management by the own management company practically unfeasible.

21. Which CMOs represent performers in your Country?

38. Currently, Belgian has only 1 CMO representing performers. Playright manages the remuneration rights for all types of performers in music and audio-visual recordings.

PlayRight: https://playright.be/en/

22. Do these CMOs comply with transparency principles?

39. YES. Such transparency obligation had been introduced in Belgian legislation by the Act of 10 December 2009 with regard to the status and control of rights management companies. These rules have been updated by the Act of 8 June 2017 transposing into Belgian law Directive 2014/26/EU on the collective management of copyright and related rights and later on codified into the CEL in 2014. The 2009 Act introduced a series of transparency obligations and installed a competent national authority, under the responsibility of the Minister of Economic Affairs wo is competent for the recognition of collective management organisations.

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

40. YES. Such information is available in the annual report of PlayRight, that are made available on their website (Dutch/French versions only).

https://playright.be/fr/rapports-annuels/

A compilation (and analysis) of the annual transparency reports of all Belgian collective management organisations can be found in the annual reports of the Belgian competent authority, which are made available on their website (only in French and Dutch).

https://economie.fgov.be/fr/themes/propriete-intellectuelle/droits-de-pi/droits-dauteur-et-droits/droits-dauteur/service-de-controle-des

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

41. Impossible to answer this question.

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

42. Constitutional Court, Case nr. 128/2016, 13th October 2016 (regarding also equitable remuneration, see nr. 73). In this case, the court rejected an action for annulment of the right to compensation for cable transmission as contained in Art. XI.225 CEL (see nr. 18) and affirmed that the differentiation between the exclusive right to retransmission by cable, which is transferable, and the right to compensation, which is non-transferable, is not contrary to European Union law, nor Belgian law.

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

43. YES. Article XI.289 CEL states:

"*Without prejudice to the provisions of international agreements, the rights guaranteed in Belgium by this title also apply to foreign authors and foreign holders of neighbouring rights, but not for a longer period than determined by Belgian law.*

However, if those rights expire in their own country after a shorter period, they also expire in Belgium after the expiry of that period.

If the Belgian authors and the Belgian holders of neighbouring rights are protected to a lesser extent in a foreign country, the benefits of this title apply to nationals of that country only to the same extent.

Notwithstanding paragraph 1, reciprocity shall apply to the remuneration rights of publishers, performers and producers of phonograms, as well as to first fixations of films referred to in Articles XI.229, XI.235, XI.240 and XI.243, without prejudice to the Treaty on European Union."

Article XI.229 and XI.235 CEL refer to the remuneration for the reprographic exception and as such does not apply to performers.

Article XI.240 CEL refers to the remuneration for the use for the benefit of education and scientific research and as such also applies to performers.

Article XI.243 CEL refers to the remuneration for public lending and as such also applies to performers.

27. Are there "appropriate and proportionate remuneration" provisions?

44. YES. Article XI.205/1 CEL has taken over the wording of Article 18 of directive 2019/790 on copyright and related rights in the Digital Single Market and states that *where a performer has transferred or licensed his exclusive rights to exploit his performance under an exploitation agreement, he retains the right to receive an appropriate and proportionate remuneration*.

28. Are CMO´s mandates always exclusive and encompassing all rights?

45. NO, they can be (and in practice generally are), but there is no legal obligation for assigning all rights for all territories to one single CMO.

29. Are there any partial/global revocation of transfer of rights agreements provisions?

46. YES. The article 22 of directive 2019/790 has been implemented by the articles XI.167/4 CEL (for authors) and XI.205/4 CEL (for performers).

30. Are there any provisions on contractual remuneration adjustments?

47. YES. The article 20 of directive 2019/790 has been implemented by the articles XI.167/3 CEL (for authors) and XI.205/3 CEL (for performers).

PANEL II – PHONOGRAM PRODUCERS' RIGHTS

1. Which rights are awarded to phonogram producers?

48. The CEL grants producers with economic rights on their phonograms.

49. All economic rights are initially granted as exclusive rights. Article XI.209 CEL grants phonogram producers with the exclusive rights on reproduction, renting, lending, communication to the public (including making available) and distribution.

Although part of the right to communication to the public, the Belgian legislation explicitly grants phonogram producers the right to authorize the (cable) retransmission of their phonograms (art.XI.223 CEL) as well as the right to authorize the communication to the public via direct injection of their phonograms (art.XI.226 CEL).

50. In accordance with the provisions on authors, phonogram producers' exclusive rights are limited to a remuneration right in the following situations:

- Article XI.217, 7° CEL limits the exclusive reproduction right of phonogram producers for what concerns the act of **private copying**. For this act, permission from the phonogram producer is not needed. XI.229 CEL grants phonogram producers with a remuneration right for private copying. For the collection and distribution of this remuneration, collective management is mandatory.

- Article XI.217/1, 1°, 3) and 4° limit the producers' exclusive rights to reproduction and communication to the public for the **use for the benefit of education and scientific research**. For these acts, permission from the phonogram producer is not needed. Article XI.240 (3) CEL offers phonogram producers a right to be remunerated for such use. For the collection and distribution of this remuneration, collective management is mandatory.

- Article XI.218 CEL limits the exclusive right of phonogram producers for the **lending** of phonograms when such lending is made for an educational or cultural purpose by institutions officially recognized or established for that purpose by the government. For this lending, permission from the phonogram producer is not needed. Article XI.243 CEL offers phonogram producers a right to be remunerated for such lending. For the collection and distribution of this remuneration, collective management is mandatory.

In addition, the exclusive right on communication to the public of phonogram producers is limited to a remuneration right in the following situation:

- Article XI.212 CEL limits the exclusive right on communication to the public granted to performances fixed on phonograms for what concerns the acts of **public**

performance and radio broadcasting. For these acts, permission from the phonogram producer is not needed. Article XI.213 CEL grants phonogram producers with a right to equitable remuneration for every public performance or broadcasting of the phonogram. For the collection and distribution of this remuneration, collective management is mandatory.

a) Reproduction

51. YES. Article XI.209 §1 (1) CEL grants phonogram producers with the exclusive right on reproduction (see nrs. 49 and 50 above).

b) Broadcasting

52. YES. Article XI.209 §1 (4) CEL grants phonogram producers with the exclusive right on communication to the public, including broadcasting. For performances fixed on phonograms, this right is reduced to a remuneration right by articles XI.212 to XI.214 CEL (see nrs. 49 and 50 above).

c) Communication to the public

53. YES. Article XI.209 §1 (4) CEL grants phonogram producers with the exclusive right on communication to the public, including the right to making available.

d) Distribution

54. YES. Article XI.209 §1 (3) CEL grants phonogram producers with the exclusive right on distribution (see nrs. 49 and 50 above).

e) Rental

55. YES. Article XI.209 §1 (2) CEL grants phonogram producers with the exclusive right on rental.

f) Making available to the public

56. YES. Article XI.209 §1 (4) CEL grants phonogram producers with the exclusive right on making available as part of the right to communication to the public.

g) (cable) retransmission

57. YES. Article XI.223 CEL grants phonogram producers with the exclusive right on (cable) retransmission. This right can only be exercised by a collective management organisation representing phonogram producers.

h) Direct Injection

58. YES. Articles XI.209 juncto XI.226 CEL grant producers with the exclusive right on communication to the public via direct injection. This right can only be exercised by a collective management organisation representing phonogram producers.

i) Any other rights?

59. YES. Article 209 §1 (2) CEL grants phonogram producers with the exclusive rights on **lending**. Article XI.218 CEL limits this exclusive right of phonogram (and audio-visual) producers for the lending of phonograms or first fixations of films when such lending is made for an educational or cultural purpose by institutions officially recognized or established for that purpose by the government.

For this lending, permission from the producer is not needed. Article XI.243 CEL offers producers a right to be remunerated for such lending. For the collection and distribution of this remuneration, collective management is mandatory.

2. What is the nature of those rights? – Statutory? Contractual?

60. All above rights are granted to phonogram producers by law. Contracts can never attribute a neighbouring right to a phonogram producer. Arrangements can however be made between phonogram producers who would produce a phonogram together as to their respective share in said rights.

3. Which of them are exclusive/remuneration rights?

61. See nrs. 49 to 58 above. All economic rights are initially granted as exclusive rights. For certain forms of exploitation, these exclusive rights are limited to a remuneration right.

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

62. See nr. 50 above. In Belgium the following exceptions/limitations generate remuneration rights for phonogram producers.

- Public performance and broadcasting of phonograms (limitation of the exclusive right to communication to the public).
- Private copying (exception to the exclusive reproduction right).
- Public lending (exception to the exclusive distribution right).
- Exception for the use for the benefit of education and scientific research (exception to the exclusive reproduction right and the right to communication to the public).

5. Are there any legal presumptions of transfer or is it voluntary/contractual?

63. There are no legal presumptions of transfer of the above listed phonogram producers' rights. All transfers are voluntary / contractual. However, as said, certain rights (cable) retransmission, direct injection) can only be exercised by CMO's.

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

64. See nr. 63.

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

65. That is up to the individual phonogram producer to decide. There are no legal rules, except for the equitable remuneration for broadcasting and communication to the public, which is fixed by a Royal Decree, imposing a specific tariff per type of exploitation (bars, discotheques, shops, at the workplace, etc.). The same goes for the other legally fixed remunerations (private copy, lending, education & scientific research).

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

66. Except for the equitable remuneration for broadcasting and communication to the public, which is fixed by a Royal Decree, imposing a specific tariff per type of exploitation (bars, discotheques, shops, at the workplace, etc.), and the other legally fixed remunerations (private copy, lending, education & scientific research), no legal minimum amounts are due. There are also no other economic benefits fixed by law.

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

67. YES.

10. Which rights are currently being collected via CMOs?

68. See nr. 50 above. SIMIM, the Belgian collective management organisation for phonogram producers (www.simim.be), manages all remuneration rights granted to producers, as well as certain exclusive rights, e.g. synchronisation rights with television stations, (cable) retransmission rights, direct injection rights and digital radios.

11. Which CMOs represent phonogram producers in your Country?

69. Currently, Belgium has only 1 CMO representing phonogram producers. SIMIM manages the rights mentioned under nr. 68 for all phonogram producers.

12. Do these CMOs comply with transparency principles?

70. YES. Such transparency obligation had been introduced in Belgian legislation by the Act of 10 December 2009 regarding the status and control of rights management

companies. These rules have been updated by the Act of 8 June 2017 transposing into Belgian legislation Directive 2014/26/EU on the collective management of copyright and related rights, and later on codified into the CEL in 2014. The 2009 Act introduced a series of transparency obligations and installed a competent national authority, under the responsibility of the Minister of Economic Affairs wo is competent for the recognition of collective management organisations.

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

71. YES. Such information is available in the annual report of SIMIM, available on its website.

A compilation (and analysis) of the annual transparency reports of all Belgian CMO's can be found in the annual reports of the Belgian competent authority, which are made available on its website (only in French and Dutch).

https://economie.fgov.be/fr/themes/propriete-intellectuelle/droits-de-pi/droits-dauteur-et-droits/droits-dauteur/service-de-controle-des

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

72. Hard to answer, but based on published case law, cases seem far and between (excluding simple recovery cases from users who don't pay the equitable remuneration).

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

73. To name but a few:

- Council of State, case nr. 139.957, 31st January 2005 (confirms that a degressive rate can be applied regarding the equitable remuneration)

- Council of State, case nr. 250.560 of May 11th 2021 (confirms that the Belgian conditions for liberal professions to pay the equitable remuneration are compliant with the Del Corso case law)

- Brussels, September 9th 2002 (confirms that a producer has a destination right)

- Constitutional Court, Case nr. 128/2016, 13th October 2016 (the equitable remuneration ex articles XI.212 and XI.213 CEL only applies to the neighbouring rights, not to the copyright a producer might own on the work as well)

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

74. Not on behalf of the phonogram producers.

17. What is considered a “phonogram published for commercial purposes”?

75. Belgian law doesn’t make a distinction, but only mentions “phonograms”.

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

76. Belgian law doesn’t make a distinction, but only mentions “phonograms”.

19. Which rights are involved in audiovisual synchronization (“production music”)?

77. The producer owns all rights in his phonogram. Contrarily to some categories of rightsholders (authors, performers) no automatic assignment of the phonogram producer’s rights is foreseen to the benefit of the audiovisual producer. Hence, the phonogram producer can fully exercise his rights on his phonogram, whether it’s an existing one or one that has been made specifically for an audiovisual production. Synchronisation of said phonogram will thus be done upon terms to be negotiated between both producers. A synchronization contract will be based upon the reproduction right and might also grant communication rights regarding the audiovisual work in which the phonogram has been synchronized. It is to be noted that further to the Atresmedia case no equitable remuneration is due for phonograms that have been legally synchronized with audiovisual works which are protected by copyright.

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

78. The producer owns all rights in his phonogram. The law only mentions “phonograms” and makes no difference between ‘regular’ phonograms (i.e. made by known artists) and phonograms made for mood music / sound branding. The producer of said phonograms therefor owns the same kinds of rights as any other phonogram producer. However typically the use of this kind of phonogram will command lower fees than the use of ‘regular’ phonograms.

PANEL III – BROADCASTERS AND AUDIOVISUAL PRODUCERS' RIGHTS

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

79. The CEL grants broadcasters with economic rights.

It should be noted that these rights are only granted to broadcasters with regard to their specific activity as broadcasters. As confirmed by Belgian case law (Brussels Tribunal (summ.), 18 October 1995, *A&M*, 1997, p. 57), broadcasters that also produce their own programs/productions (or enter into a co-production), receive the full protection as a producer of first fixation on film with regard to those productions (see no. 101 to113).

80. All economic rights are initially granted as exclusive rights. Article XI.215 CEL grants broadcasters with the exclusive rights on broadcasting and rebroadcasting, (cable)retransmission, communication to the public by satellite, reproduction, distribution, public performance with an admission fee and making available of their broadcasts.

81. In accordance with the provisions on authors, exceptions to the exclusive rights of broadcasters are provided in the following situations:

- Article XI.217, 7° CEL limits the broadcasters' exclusive reproduction right for what concerns the act of **private copying**. Unlike other categories of right holders (authors, performers and producers), broadcasters are not entitled to compensation.

- Article XI.217/1, 1°, 3) and 4° limit the broadcasters' exclusive rights to reproduction and communication to the public for the **use for the benefit of education and scientific research**. Unlike other categories of right holders (authors, performers and producers), broadcasters are not entitled to compensation.

a) Fixation

82. NO. The Belgian CEL does not explicitly grant broadcasters with an exclusive right on the fixation of their live-broadcasts. However, it is commonly accepted that this is included in the exclusive rights on reproduction granted by article 215 §1, b) CEL (see nr. 80).

b) Reproduction

83. YES. Article 215 §1, b) CEL grants broadcasters the exclusive rights on reproduction (see nr. 80).

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

84. YES. Belgian law does not offer broadcasters with a generally applicable exclusive right of communication to the public as granted to authors, performers and producers. However, article 215 §1 CEL grants broadcasters with the exclusive rights on making available, (cable) retransmission, communication to the public via satellite and public performance with admission fees (see nr. 80).

d) Distribution

85. YES. Article 215 §1, b) CEL grants broadcasters the exclusive rights on distribution of fixations of their broadcasts (see nr. 80).

e) Simultaneous retransmission by wire or wireless means

86. YES. Article 215 §1, a) CEL grants broadcasters the exclusive rights on (cable) retransmission (and communication to the public by satellite) (see nr. 80).

f) Deferred retransmission by wire or wireless means

87. YES. Article 215 §1, a) CEL which grants broadcasters the exclusive rights on (cable) retransmission (and communication to the public by satellite) explicitly refers to direct or deferred broadcasting including its (cable) retransmission (see nr. 80).

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

88. YES. Article 215 §1, d) CEL grants broadcasters the exclusive right on the making available of their broadcasts (see nr. 80).

h) Pre-broadcast program carrying signal protection

89. No. Belgian law does not provide an explicit protection for pre-broadcast signals.

i) Any other rights?

90. NO.

<u>2. What is the nature of those rights? – Statutory? Contractual?</u>

91. All above rights are granted to broadcasters by law.

<u>3. Which of them are exclusive/remuneration rights?</u>

92. See nrs. 80-81 above. All economic rights are granted as exclusive rights. In their capacity as broadcaster, broadcasters are not entitled to remuneration rights.

<u>4. Which exceptions/limitations generate remuneration rights for broadcasters?</u>

93. See nrs. 80-81 above. In their capacity as broadcaster, broadcasters are not entitled to remuneration rights.

5. Are there any legal presumptions of transfer or is it voluntary/contractual?

94. No. There are no legal presumptions of transfer of rights to broadcasters in their capacity of broadcaster. However, in their capacity as producer of their own programs, they can invoke the presumption of transfer laid down in the articles XI.182 CEL and XI.206 CEL (see nr. 118).

6. What is the relevance of copyright infringement in relation to broadcasters' rights?

95. Broadcasters are increasingly victims of illegal IPTV providers.

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

96. YES. Broadcasters are increasingly victims of illegal IPTV providers, which can be considered as a form of digital piracy.

8. Do UGC platforms contribute to broadcasters' rights? How?

97. Broadcasters have the option to offer their broadcasts via UGC platforms and are increasingly making use of this. The extent to which these platforms pay a contribution (if at all) depends entirely on the individual negotiations between the broadcasters and these platforms.

A direct mandatory contribution by UGC platforms is only guaranteed for authors and performers that have assigned their right to authorise or prohibit communication to the public, including making available to the public, by an online streaming service (as defined by Article XI.228/10 CEL) to a producer (see nr. 35).

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

98. Hard to answer, but based on published case law, cases that concern the neighbouring rights of broadcasters seem rare.

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

99. NO. Nothing particular to mention.

11. Are broadcasters acting as One-Stop Shop in relation to retransmission operators?

100. NO. Article XI.224 §3 CEL excludes broadcasters from the mandatory collective management of the right to (cable) retransmission for what concerns their own broadcasts. This exception also includes the rights they exercise in their capacity of producer as well as the exercise of the exclusive rights that were transferred to them

by other right holders (authors, performers, producers), without prejudice to the remuneration rights granted to these categories of right holders.

Article XI.227 §3 CEL provides for a similar exception for what concerns the exercise of the exclusive right on communication to the public via direct injection.

12. Which rights are awarded to audio-visual producers in your Country?

101. The CEL grants producers of first fixations on film economic rights.

102. All economic rights are initially granted as exclusive rights. Article XI.209 CEL grants producers of first fixations on film with the exclusive rights on reproduction, renting, lending, communication to the public (including making available) and distribution.

103. Although part of the right to communication to the public, the Belgian legislation explicitly grants producers of first fixations on film the right to authorize the (cable) retransmission of their fixations on film (art.XI.223 CEL) as well as the right to authorize the communication to the public via direct injection of their fixations on film (art.XI.226 CEL).

104. In accordance with the provisions on authors, the exclusive rights of producers of first fixations on film are limited to a remuneration right in the following situations:

- Article XI.217, 7° CEL limits the exclusive reproduction right of producers of first fixations on film for what concerns the act of **private copying**. Article XI.229 CEL grants producers of first fixations on film with a remuneration right for private copying. For the collection and distribution of this remuneration, collective management is mandatory.

- Article XI.217/1, 1°, 3) and 4° limit the producers' exclusive rights to reproduction and communication to the public for the **use for the benefit of education and scientific research**. For these acts, permission from the producers of first fixations on film is not needed. Article XI.240 (3) CEL offers producers of first fixations on film a right to be remunerated for such use. For the collection and distribution of this remuneration, collective management is mandatory.

- Article XI.218 CEL limits the exclusive right of producers of first fixations on film for the lending of audio-visual works when such **lending** is made for an educational or cultural purpose by institutions officially recognized or established for that purpose by the government. For this lending, permission from the producers of first fixations on film is not needed. Article XI.243 CEL offers producers of first fixations on film a right to be remunerated for such lending. For the collection and distribution of this remuneration, collective management is mandatory.

a) Reproduction

105. YES. Article XI.209 §1 (1) CEL grants producers of first fixations on film with the exclusive right on reproduction (see nrs. 103 and 104 above).

b) Broadcasting

106. YES. Article XI.209 §1 (4) CEL grants producers of first fixations on film with the exclusive right on communication to the public, which includes broadcasting.

c) Communication to the public

107. YES. Article XI.209 §1 (4) CEL grants producers of first fixations on film with the exclusive right on communication to the public, including the right to making available.

d) Distribution

108. YES. Article XI.209 §1 (3) CEL grants producers of first fixations on film with the exclusive right on distribution (see nrs. 103 and 104 above).

e) Rental

109. YES. Article XI.209 §1 (2) CEL grants producers of first fixations on film with the exclusive right on rental.

f) Making available to the public

110. YES. Article XI.209 §1 (4) CEL grants producers of first fixations on film with the exclusive right on making available as part of the right to communication to the public.

g) (cable) Retransmission

111. YES. Article XI.223 CEL grants producers of first fixations on film with the exclusive right on (cable) retransmission. This right can only be exercised by a collective management organisation representing phonogram producers.

h) Direct Injection

112. YES. Articles XI.209 juncto XI.226 CEL grant producers of first fixations on film with the exclusive right on communication to the public via direct injection. This right can only be exercised by a collective management organisation representing phonogram producers.

i) Any other rights?

113. YES. Article 209 §1 (2) CEL grants producers of first fixations on film with the exclusive rights on lending. Article XI.218 CEL limits this exclusive right of producers of first fixations on film (and producers of phonograms) for the lending first fixations of films or phonograms when such lending is made for an educational or cultural purpose by institutions officially recognized or established for that purpose by the government.

For this lending, permission from the producer is not needed. Article XI.243 CEL offers producers a right to be remunerated for such lending. For the collection and distribution of this remuneration, collective management is mandatory.

13. What is the nature of those rights? – Statutory? Contractual?

114. All above rights are granted to producers of first fixations on film by law. Contracts can never attribute a neighbouring right to a producer of first fixations on film. Arrangements can however be made between producers of first fixations on film (with other producers, broadcasters or distributors) who would produce an audio-visual work together as to their respective share in said rights.

14. Which of them are exclusive rights? Which of them are remuneration rights?

115. See nrs. 103 to 104 above. All economic rights are initially granted as exclusive rights. For certain forms of exploitation, these exclusive rights are limited to a remuneration right.

15. Which exceptions/limitations generate remuneration rights for audio-visual producers?

116. See nr. 104 above. In Belgium the following exceptions/limitations generate remuneration rights for producers of first fixations on film.

- Private copying (exception to the exclusive reproduction right).

- Public lending (exception to the exclusive distribution right).

117. Exception for the use for the benefit of education and scientific research (exception to the exclusive reproduction right and the right to communication to the public).

16. Which rights are transferred to audio-visual producers? For how long?

118. In theory all exclusive rights of authors, performers (and other producers) can be transferred by contract. For what concerns the rights of authors and performers, in some cases, this can be the result of a presumption of transfer. The contract determines the term of the transfer. There is no legal limitation on the duration of the transfer.

The moral rights of authors and performers are explicitly made non-transferable and cannot be waved in a global manner.

All remuneration rights (of authors and performers) are non-transferable (see nr. 27), regardless of whether they stem from an exception/limitation or the transfer of an exclusive right (see nr. 24). The law always specifies whether these provisions are mandatory law or not and whether collective management is mandatory.

17. Are there any legal presumptions of transfer towards audio-visual producers?

119. YES. The articles XI.182 CEL and XI.206 CEL provide for a presumption of transfer resp. an author's and a performer's exclusive right of audio-visual exploitation of his work or performance, including the rights necessary for this exploitation, such as the right to subtitle or dub the work.

18. What type of compensation is paid in exchange? How is it set? For how long?

120. Article XI.206 CEL stipulates that a producer of a first fixation on film to whom a performer's exclusive rights are transferred as result of the presumption of transfer, is obliged to provide a remuneration that is in proportion to the revenues that stem from the exploitation of the audio-visual work and specifies that the producer is obliged to provide the performer at least once a year with an overview of the revenue received for each form of exploitation.

Since this provision allows contractual terms to provide otherwise, the actual use of a presumed transfer is unused in practice and performers' rights are always transferred by contract and in exchange for a lump-sum buyout.

121. For what concerns the transfer of exclusive rights of other right holders (other producers), there are no legal rules. Therefor the compensation of a producer of a first fixation on film is to be negotiated freely between the producer and its customers / contracting partners (other audio-visual producers, broadcasters, distributors, etc.). Duration varies on the type of exploitation.

19. How is audio-visual producer's compensation determined for each business model?

122. That is up to the individual producer of a first fixation on film to decide. There are no legal rules, except for the remuneration rights (private copy, lending, education & scientific research), which are fixed by a Royal Decree.

20. Are there minimum amounts due? Any other economic benefits?

123. Except for the remunerations rights (private copy, lending, education & scientific research), no legal minimum amounts are due. There are also no other economic benefits fixed by law.

21. Do UGC platforms contribute to such compensation schemes? How?

124. See nr. 35. A direct mandatory contribution by UGC platforms is only guaranteed for authors and performers that have assigned their right to authorise or prohibit communication to the public, including making available to the public, by an online streaming service (as defined by Article XI.228/10 CEL) to a producer.

22. Is digital piracy/streamripping still a major concern for audio-visual producers?

125. YES.

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

126. For what concerns the distribution of audio-visual works, the market in Belgium is organized as part of the Benelux. This makes it difficult to obtain these figures at country level. More information available on request.

24. What is the current rule in terms of audio-visual exploitation windows in your Country?

127. We cannot respond to this question by lack of practical knowledge.

25. Which CMOs represent audio-visual producers in your Country?

128. In Belgium audio-visual producers are represented by BAVP, AGICOA EUROPE BRUSSELS, PROCIBEL and IMAGIA. Each CMO represents different categories of rights (with a partial overlap between AGICOA EUROPE BRUSSELS and BAVP). IMAGIA is particular in that sense they act on behalf of phonogram producers, but in their specific capacity as producers of video clips.

More information on each CMO can be found on their websites.

- AGICOA EUROPE BRUSSELS: http://www.agicoabrussels.eu
- BAVP: http://www.bavp.be
- PROCIBEL: http://www.procibel.be
- IMAGIA: https://www.simim.be/fr/imagia.html

26. Do these CMOs comply with transparency principles?

YES. Such transparency obligation had been introduced in Belgian legislation by the Act of 10 December 2009 regarding the status and control of rights management companies. These rules have been updated by the Act of 8 June 2017 transposing into Belgian legislation Directive 2014/26/EU on the collective management of copyright and related rights, and later on codified into the CEL in 2014. The 2009 Act introduced a series of transparency obligations and installed a competent national authority, under the responsibility of the Minister of Economic Affairs who is competent for the recognition of CMOs.

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

129. YES. Such information is available in the annual reports, available on the website of each CMO (see nr. 127).

A compilation (and analysis) of the annual transparency reports of all Belgian collective management organisations can be found in the annual reports of the Belgian competent authority, which are made available on their website (only in French and Dutch): https://economie.fgov.be/fr/themes/propriete-intellectuelle/droits-de-pi/droits-dauteur-et-droits/droits-dauteur/service-de-controle-des

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

130. Difficult to answer, but based on published case law, cases that concern the neighbouring rights of producers of first fixations on film seem rare.

29. Are there any relevant Court Decisions concerning audio-visual producer's rights?

131. NO. Nothing particular to mention.

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

132. NO. For the exercise of the right of (cable)retransmission (and communication to the public via direct injection), collective management is made mandatory by article XI.224 CEL. In Belgium, producers of first fixations on film can entrust AGICOA EUROPE BRUSSELS or BAVP with the management of this right.

PANEL IV – DATABASES AND PRESS PUBLISHERS RIGHTS[1]

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

133. YES. In Belgium the databases can be protected under two regimes: the classic copyright protection (Art. XI.186-188 CEL) and the specific sui generis protection (Art. XI.305-318 CEL). This has been instated by the former 1998 Database Act (*Belgian Gazette* 14 November 1998), which transposes the Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (OJ L 77, 27.3.1996, p. 20–28). Regarding copyright, see Art. XI.186-188 CEL:

Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 5. Droit d'auteur et droits voisins - Chapitre 2. Droit d'auteur - Section 5. Dispositions particulières aux bases de données

*"**Art. XI.186***
Les bases de données qui, par le choix ou la disposition des matières, constituent une création intellectuelle propre à leur auteur sont protégées comme telle par le droit d'auteur.

La protection des bases de données par le droit d'auteur ne s'étend pas aux œuvres, aux données ou éléments eux-mêmes et est sans préjudice de tout droit existant sur les œuvres, les données ou autres éléments contenus dans la base de données.

Art. 187
Sauf disposition contractuelle ou statutaire contraire, seul l'employeur est présumé cessionnaire des droits patrimoniaux relatifs aux bases de données créées, dans l'industrie non culturelle, par un ou plusieurs employés ou agents dans l'exercice de leurs fonctions ou d'après les instructions de leur employeur.

Des accords collectifs peuvent déterminer l'étendue et les modalités de la présomption de cession.

Art. XI.188
L'utilisateur légitime d'une base de données ou de copies de celle-ci peut effectuer les actes visés à l'article XI.165, § 1er, qui sont nécessaires à l'accès au contenu de la base

[1] Due to lack of time this part of the report is somehow limited to references to the applicable legal provisions (in French only). Our apologies.

de données et à son utilisation normale par lui-même sans l'autorisation de l'auteur de la base de données.

Dans la mesure où l'utilisateur légitime est autorisé à utiliser une partie seulement de la base de données, l'alinéa 1er s'applique seulement à cette partie.

Les dispositions des alinéas 1er et 2 sont impératives."

For the sui generis protection see question 2.

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

134. YES. See Art. XI.305-318 CEL:

Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 7. Bases de données – Chapitre 1er. Notions et champ d'application

*"**Art. XI.305***
Le présent titre transpose la directive 96/9/CE du Parlement européen et du Conseil du 11 mars 1996 concernant la protection juridique des bases de données.

Art. XI.306
Le droit des producteurs de bases de données s'applique aux bases de données quelle que soit leur forme dont l'obtention, la vérification ou la présentation du contenu atteste un investissement qualitativement ou quantitativement substantiel.

Le droit des producteurs de bases de données s'applique indépendamment de toute protection de la base de données ou de son contenu au titre du droit d'auteur ou d'autres droits et est sans préjudice de tout droit existant sur les œuvres, les données ou les autres éléments contenus dans la base de données.

Le droit des producteurs de bases de données ne s'applique pas aux programmes d'ordinateur en tant que tels y compris ceux qui sont utilisés dans la fabrication ou le fonctionnement d'une base de données."

Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 7. Bases de données – Chapitre 2. Droits du producteur d'une base de données

"Art. XI.307

Le producteur d'une base de données a le droit d'interdire l'extraction et/ou la réutilisation de la totalité ou d'une partie, qualitativement ou quantitativement substantielle, du contenu de cette base de données.

Les extractions et/ou réutilisations répétées et systématiques de parties non substantielles du contenu de la base de données ne sont pas autorisées lorsqu'elles sont contraires à une exploitation normale de la base de données ou causent un préjudice injustifié aux intérêts légitimes du producteur de celle-ci.

La première vente d'une copie d'une base de données dans l'Union européenne par le titulaire du droit ou avec son consentement, épuise le droit de contrôler la revente de cette copie dans l'Union européenne.

Art. XI.308

Le droit des producteurs de bases de données est mobilier, cessible et transmissible, en tout ou en partie, conformément aux règles du Code civil. Il peut notamment faire l'objet d'une aliénation ou d'une licence simple ou exclusive.

Art. XI.309

Le droit des producteurs de bases de données prend naissance dès l'achèvement de la fabrication de la base de données et expire quinze ans après le 1er janvier de l'année qui suit la date d'achèvement de la fabrication.

Dans le cas d'une base de données qui est mise à la disposition du public de quelque manière que ce soit avant l'expiration de la période prévue à l'alinéa 1er, la durée de la protection expire quinze ans après le 1er janvier de l'année qui suit la date à laquelle la base de données a été mise à la disposition du public pour la première fois.

Toute modification, qualitativement ou quantitativement substantielle, du contenu de la base de données, notamment toute modification substantielle résultant de l'accumulation d'ajouts, de suppressions ou de changements successifs, qui atteste un nouvel investissement, qualitativement ou quantitativement substantiel, permet d'attribuer à la base de données qui en résulte, une durée de protection propre.

Le producteur d'une base de données a la charge de prouver la date d'achèvement de la fabrication de la base de données et la modification substantielle du contenu de la base de données qui conformément à l'alinéa 3 permet d'attribuer à la base de données qui en résulte, une durée de protection propre."

Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 7. Bases de données – Chapitre 3. Exceptions au droit des producteurs de bases de données

"Art. XI.310
§ 1er
L'utilisateur légitime d'une base de données qui est licitement mise à la disposition du public de quelque manière que ce soit, peut, sans l'autorisation du producteur:

> *1° extraire une partie substantielle du contenu d'une base de données non électronique lorsque cette extraction est effectuée dans un but strictement privé;*
>
> *2° extraire une partie substantielle du contenu de la base de données lorsque cette extraction est effectuée à des fins d'illustration de l'enseignement ou de recherche scientifique pour autant que cette extraction soit justifiée par le but non lucratif poursuivi;*
>
> *3° extraire et/ou réutiliser une partie substantielle du contenu de la base de données à des fins de sécurité publique ou aux fins d'une procédure administrative ou juridictionnelle.*

Le nom du producteur et le titre de la base de données dont le contenu est extrait à des fins d'illustration de l'enseignement ou de recherche scientifique, doivent être mentionnés.

§ 2
L'autorisation du producteur n'est pas requise pour:

> *1° tout acte nécessaire à la réalisation d'un exemplaire en format accessible d'une œuvre ou prestation à laquelle la personne bénéficiaire a un accès licite, par toute personne bénéficiaire ou toute personne agissant au nom de celle-ci, à l'usage exclusif de la personne bénéficiaire et pour autant que cela ne porte pas atteinte à l'exploitation normale de la base de données, ni ne cause un préjudice injustifié aux intérêts légitimes du producteur. Une personne bénéficiaire établie en Belgique peut obtenir un exemplaire en format accessible ou y avoir accès auprès d'une entité autorisée établie dans n'importe quel État membre de l'Union européenne;*
>
> *2° tout acte nécessaire à la réalisation, la communication, la mise à disposition ou la distribution d'un exemplaire en format accessible d'une œuvre ou*

prestation à laquelle elle a un accès licite, par toute entité autorisée établie en Belgique à une personne bénéficiaire ou une autre entité autorisée établie dans n'importe quel État membre de l'Union européenne. Une entité autorisée établie en Belgique peut également obtenir un exemplaire en format accessible ou y avoir accès auprès d'une entité autorisée établie dans n'importe quel État membre de l'Union européenne. Les actes visés aux deux phrases précédentes sont exécutés à titre non lucratif, à des fins d'utilisation exclusive par une personne bénéficiaire et ne portent pas atteinte à l'exploitation normale de la base de données, ni ne causent un préjudice injustifié aux intérêts légitimes du producteur.

Les dispositions du titre 5, chapitre 8/2, s'appliquent mutatis mutandis au paragraphe 2."

Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 7. Bases de données – Chapitre 4. Droits et obligations des utilisateurs légitimes

"Art. XI.311
Le producteur d'une base de données qui est mise à la disposition du public de quelque manière que ce soit ne peut empêcher l'utilisateur légitime de cette base d'extraire et/ou de réutiliser des parties, qualitativement ou quantitativement non substantielles, de son contenu à quelque fin que ce soit.

Dans la mesure où l'utilisateur légitime est autorisé à extraire et/ou à réutiliser une partie seulement de la base de données, l'alinéa 1er s'applique à cette partie.

Art. XI.312
L'utilisateur légitime d'une base de données qui est mise à la disposition du public de quelque manière que ce soit ne peut effectuer des actes qui sont en conflit avec l'exploitation normale de cette base de données ou qui lèsent de manière injustifiée les intérêts légitimes du producteur de la base de données.

Art. XI.313
L'utilisateur légitime d'une base de données qui est mise à la disposition du public de quelque manière que ce soit ne peut porter préjudice au titulaire d'un droit d'auteur ou d'un droit voisin portant sur des œuvres ou des prestations contenues dans cette base de données.

Art. XI.314
Les dispositions des articles XI.310 à XI.313 sont impératives.

Il peut toutefois être contractuellement dérogé aux dispositions de l'article XI.310 lorsqu'il s'agit de bases de données qui sont mises à la disposition du public à la demande selon les dispositions contractuelles de manière que chacun puisse y avoir accès de l'endroit et au moment qu'il choisit individuellement."

Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 7. Bases de données – Chapitre 5. Bénéficiaires de la protection

"Art. XI.315
Le droit des producteurs de bases de données s'applique aux bases de données dont le producteur est ressortissant d'un Etat membre de l'Union européenne ou a sa résidence habituelle sur le territoire de l'Union européenne.

L'alinéa 1er s'applique également aux sociétés et aux entreprises constituées en conformité avec la législation d'un Etat membre de l'Union européenne et ayant leur siège statutaire, leur administration centrale ou leur établissement principal à l'intérieur de l'Union. Néanmoins si une telle société ou entreprise n'a que son siège statutaire sur le territoire de l'Union européenne, ses opérations doivent avoir un lien réel et continu avec l'économie d'un Etat membre.

Les bases de données fabriquées dans des pays tiers et non couvertes par les alinéas 1er et 2, qui sont visées par des accords conclus, sur proposition de la Commission de l'Union européenne, par le Conseil, sont protégées par le droit des producteurs de bases de données. La durée de la protection accordée à ces bases de données ne peut dépasser celle prévue à l'article XI.309."

Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 7. Bases de données – Chapitre 6. Protection juridique des mesures techniques et de l'information sur le régime des droits

*" **Art. XI.316***
§ 1er
Toute personne qui contourne toute mesure technique efficace, en le sachant ou en ayant des raisons valables de le penser, est coupable d'un délit.

Toute personne qui fabrique, importe, distribue, vend, loue, fait de la publicité en vue de la vente ou de la location, ou possède à des fins commerciales des dispositifs, produits ou composants, ou preste des services qui:

> *1° font l'objet d'une promotion, d'une publicité ou d'une commercialisation, dans le but de contourner la protection de toute mesure technique efficace, ou*

2° n'ont qu'un but commercial limité ou une utilisation limitée autre que de contourner la protection de toute mesure technique efficace, ou

3° sont principalement conçus, produits, adaptés ou réalisés dans le but de permettre ou de faciliter le contournement de la protection de toute mesure technique efficace, est coupable d'un délit.

Les mesures techniques sont réputées efficaces au sens des alinéas 1er et 2 lorsque l'utilisation d'une base de données est contrôlée par les titulaires du droit grâce à l'application d'un code d'accès ou d'un procédé de protection tel que le cryptage, le brouillage ou toute autre transformation de l'œuvre ou de la prestation ou d'un mécanisme de contrôle de copie qui atteint cet objectif de protection.

§ 2
Les producteurs de bases de données prennent dans un délai raisonnable des mesures volontaires adéquates, y compris des accords avec les autres parties concernées, afin de fournir à l'utilisateur d'une base de données, les moyens nécessaires pour pouvoir bénéficier des exceptions prévues à l'article XI.310, alinéa 1er, 2° et 3°, lorsque celui-ci a un accès licite à la base de données protégée par les mesures techniques.

§ 3
Les mesures techniques appliquées volontairement par les producteurs de bases de données, y compris celles mises en œuvre en application d'accords volontaires, ainsi que les mesures techniques mises en œuvre en vertu d'une ordonnance rendue en application de l'article 2bis de la loi du 10 août 1998 transposant en droit judiciaire belge la directive européenne du 11 mars 1996 concernant la protection juridique des bases de données, jouissent de la protection juridique prévue au paragraphe 1er.

§ 4
Le paragraphe 2 ne s'applique pas aux bases de données qui sont mises à la disposition du public à la demande selon des dispositions contractuelles entre parties, de manière que chacun puisse y avoir accès de l'endroit et au moment qu'il choisit individuellement.

§ 5
Les mesures techniques de protection visées au paragraphe 1er ne peuvent empêcher les acquéreurs légitimes de bases de données d'utiliser ces bases de données conformément à leur destination normale.

Art. XI.317

§ 1er
Toute personne qui accomplit sciemment et sans autorisation, l'un des actes suivants:

> *1° la suppression ou la modification de toute information sur le régime des droits se présentant sous forme électronique, et*
>
> *2° la distribution, l'importation aux fins de distribution, la radiodiffusion, la communication au public ou la mise à disposition du public des bases de données, et dont les informations sur le régime des droits se présentant sous forme électronique ont été supprimées ou modifiées sans autorisation, en sachant ou en ayant des raisons valables de penser que, ce faisant, elle entraîne, permet, facilite ou dissimule une atteinte au droit des producteurs des bases de données, est coupable d'un délit*

§ 2
Au sens du présent article, on entend par "information sur le régime des droits, toute information fournie par les producteurs de bases de données qui permet d'identifier la base de données, ou le producteur de la base de données. Cette expression désigne également les informations sur les conditions et modalités d'utilisation de la base de données ainsi que tout numéro ou code représentant ces informations.

L'alinéa 1er s'applique lorsque l'un quelconque de ces éléments d'information est joint à la copie ou apparaît en relation avec la communication au public d'une base de données."

Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 7. Bases de données – Chapitre 7. Contrefaçon

*" **Art. XI.318***
Toute atteinte méchante ou frauduleuse portée au droit des producteurs de bases de données constitue un délit de contrefaçon.

Il en est de même de l'application méchante ou frauduleuse du nom d'un producteur de bases de données ou de tout signe distinctif adopté par lui pour désigner sa prestation; de telles prestations seront regardées comme étant contrefaites.

Ceux qui, avec une intention méchante ou frauduleuse, réutilisent, mettent en dépôt pour être réutilisées ou introduisent sur le territoire belge, dans un but commercial, les bases de données contrefaites sont coupables du même délit.

Lorsque les faits soumis au tribunal font l'objet d'une action en cessation en application de l'article XVII.14, XVII.15, XVII.18, XVII.19 et XVII.20, il ne peut être statué sur l'action pénale qu'après qu'une décision passée en force de chose jugée a été rendue relativement à l'action en cessation."

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

135. Difficult to answer, but it does not seem to really achieve the goals set out.

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

136. The following rights could offer protection (to a certain extent), provided the relevant conditions for protection are fulfilled:

- Copyright protection in the database itself, or in the content represented in the database.

- Patent law.

- Trade secrets law: Art. XI.332/1-332/5; Art. XI.336/1-336/5; Art. XI.342/1-342/3 CEL. Transposition of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1–18).

5. How does it work? Is it effective? (Left unanswered)

6. How do the courts of your Country balance the sui generis right with freedom of information and freedom of competition? (Left unanswered)

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

137. YES. See Art. XI.316 and XI.317 CEL:

Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 7. Bases de données – Chapitre 6. Protection juridique des mesures techniques et de l'information sur le régime des droits

*" **Art. XI.316***
§ 1er

Toute personne qui contourne toute mesure technique efficace, en le sachant ou en ayant des raisons valables de le penser, est coupable d'un délit.

Toute personne qui fabrique, importe, distribue, vend, loue, fait de la publicité en vue de la vente ou de la location, ou possède à des fins commerciales des dispositifs, produits ou composants, ou preste des services qui:

> *1° font l'objet d'une promotion, d'une publicité ou d'une commercialisation, dans le but de contourner la protection de toute mesure technique efficace, ou*
>
> *2° n'ont qu'un but commercial limité ou une utilisation limitée autre que de contourner la protection de toute mesure technique efficace, ou*
>
> *3° sont principalement conçus, produits, adaptés ou réalisés dans le but de permettre ou de faciliter le contournement de la protection de toute mesure technique efficace, est coupable d'un délit.*

Les mesures techniques sont réputées efficaces au sens des alinéas 1er et 2 lorsque l'utilisation d'une base de données est contrôlée par les titulaires du droit grâce à l'application d'un code d'accès ou d'un procédé de protection tel que le cryptage, le brouillage ou toute autre transformation de l'œuvre ou de la prestation ou d'un mécanisme de contrôle de copie qui atteint cet objectif de protection.

§ 2
Les producteurs de bases de données prennent dans un délai raisonnable des mesures volontaires adéquates, y compris des accords avec les autres parties concernées, afin de fournir à l'utilisateur d'une base de données, les moyens nécessaires pour pouvoir bénéficier des exceptions prévues à l'article XI.310, alinéa 1er, 2° et 3°, lorsque celui-ci a un accès licite à la base de données protégée par les mesures techniques.

§ 3
Les mesures techniques appliquées volontairement par les producteurs de bases de données, y compris celles mises en œuvre en application d'accords volontaires, ainsi que les mesures techniques mises en œuvre en vertu d'une ordonnance rendue en application de l'article 2bis de la loi du 10 août 1998 transposant en droit judiciaire belge la directive européenne du 11 mars 1996 concernant la protection juridique des bases de données, jouissent de la protection juridique prévue au paragraphe 1er.

§ 4
Le paragraphe 2 ne s'applique pas aux bases de données qui sont mises à la disposition du public à la demande selon des dispositions contractuelles entre parties, de manière

que chacun puisse y avoir accès de l'endroit et au moment qu'il choisit individuellement.

§ 5
Les mesures techniques de protection visées au paragraphe 1er ne peuvent empêcher les acquéreurs légitimes de bases de données d'utiliser ces bases de données conformément à leur destination normale.

Art. XI.317
§ 1er
Toute personne qui accomplit sciemment et sans autorisation, l'un des actes suivants:

1° la suppression ou la modification de toute information sur le régime des droits se présentant sous forme électronique, et

2° la distribution, l'importation aux fins de distribution, la radiodiffusion, la communication au public ou la mise à disposition du public des bases de données, et dont les informations sur le régime des droits se présentant sous forme électronique ont été supprimées ou modifiées sans autorisation, en sachant ou en ayant des raisons valables de penser que, ce faisant, elle entraîne, permet, facilite ou dissimule une atteinte au droit des producteurs des bases de données, est coupable d'un délit

§ 2
Au sens du présent article, on entend par "information sur le régime des droits, toute information fournie par les producteurs de bases de données qui permet d'identifier la base de données, ou le producteur de la base de données. Cette expression désigne également les informations sur les conditions et modalités d'utilisation de la base de données ainsi que tout numéro ou code représentant ces informations.

L'alinéa 1er s'applique lorsque l'un quelconque de ces éléments d'information est joint à la copie ou apparaît en relation avec la communication au public d'une base de données."

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

138. YES. See Art. XI.216/1- 216/3 CEL:

- Definition of press publication

Press publications are defined in the new article XI.216/1 of the CEL, in similar wording as in art. 2, paragraph 4 of the DSM Directive.

> ***Code de droit économique - Livre XI. Propriété intellectuelle et secrets d'affaires - Titre 5. Droit d'auteur et droits voisins – Chapitre 3. Des droits voisins – Section 6/1. Dispositions relatives aux éditeurs de presse***
>
> ***"Art. XI.216/1***
> *§ 1er. Aux fins de la présente section, on entend par "publication de presse" une collection composée principalement d'œuvres littéraires de nature journalistique, mais qui peut également comprendre d'autres œuvres ou prestations, et qui:*
>
> > *a) constitue une unité au sein d'une publication périodique ou régulièrement actualisée sous un titre unique, telle qu'un journal ou un magazine généraliste ou spécialisé;*
> >
> > *b) a pour but de fournir au public en général des informations liées à l'actualité ou d'autres sujets; et*
> >
> > *c) est publiée sur tout support à l'initiative, sous la responsabilité éditoriale et sous le contrôle d'un prestataire de services.*
>
> *Les périodiques qui sont publiés à des fins scientifiques ou universitaires, tels que les revues scientifiques, ne sont pas considérés comme des publications de presse.*
>
> *§ 2. Aux fins de la présente section, on entend par "service de la société de l'information" un service au sens de l'article I.18, 1°."*

The Explanatory Memorandum of the Draft Act (p. 72, DOC 55 2608/001) refers to recital 56 of the DSM Directive:

> "*Conformément au considérant (56) de la directive: "(…) il est nécessaire de définir la notion de publications de presse de manière que cette notion ne couvre que les publications journalistiques, publiées dans les médias quels qu'ils soient, y compris sur papier, dans le contexte d'une activité économique qui constitue une fourniture de services en vertu du droit de l'Union. Les publications de presse qui devraient être couvertes comprennent, par exemple, des journaux quotidiens, des magazines hebdomadaires ou mensuels généralistes ou spécialisés, y compris les magazines vendus sur abonnement, et des sites internet d'information. Les publications de presse contiennent principalement des œuvres littéraires, mais également, et de plus en plus, d'autres types d'œuvres et autres objets protégés, notamment des photos et des*

vidéos. (…)". Ce considérant (56) poursuit en précisant que sont par contre exclues les publications périodiques, publiées à des fins scientifiques ou universitaires, telles que les revues scientifiques, ainsi que les sites internet, tels que les blogs, qui fournissent des informations dans le cadre d'une activité qui n'est pas effectuée à l'initiative, sous la responsabilité et le contrôle éditorial, d'un éditeur de presse."

- Rights of the press publisher

The press publisher is granted rights in article XI.216/2, § 1 CEL:

"Art. XI.216/2, § 1
Sans préjudice du droit de l'auteur, de l'artiste-interprète ou exécutant, du producteur de phonogrammes ou de premières fixations de films et de l'organisme de radiodiffusion, l'éditeur de presse établi dans un État membre de l'Union européenne a seul le droit de:

1° reproduire sa publication de presse ou d'en autoriser la reproduction, de quelque manière et sous quelque forme que ce soit, qu'elle soit directe ou indirecte, provisoire ou permanente, en tout ou en partie, pour son utilisation en ligne par un prestataire de services de la société de l'information;

2° mettre sa publication de presse à la disposition du public par un procédé quelconque, pour son utilisation en ligne par un prestataire de services de la société de l'information, de manière que chacun puisse y avoir accès de l'endroit et au moment qu'il choisit individuellement."

The Explanatory Memorandum (p. 74 DOC 55 2608/001) provides:

"*En ce qui concerne le droit des auteurs et des autres titulaires de droits voisins d'exploiter leurs œuvres et prestations indépendamment de la publication de presse dans laquelle elles sont intégrées, on peut mentionner que ceci découle déjà de l'article XI.203 CDE: l'alinéa 1er interdit toute atteinte aux droits des auteurs et précise qu'aucune disposition du chapitre 3 – consacré aux droits voisins – ne peut être interprétée comme venant limiter les droits des auteurs, et l'alinéa 2 précise que les droits voisins peuvent faire l'objet d'une licence simple ou exclusive. Par conséquent, il est proposé de ne pas reprendre cette partie de la directive textuellement dans la disposition. C'est donc le droit commun de l'article XI.203 CDE qui s'applique. Ceci implique par ailleurs que lorsqu'une œuvre ou prestation est intégrée dans une publication de presse sur la base d'une licence non exclusive, le nouveau droit voisin ne peut être invoqué pour interdire l'utilisation par d'autres utilisateurs autorisés.*"

The law provides for mandatory negotiations between publishers and platforms, to the extent that the press publisher is willing to allow exploitation of his journalistic content. The draft bill also provides for the possibility of resorting to dispute resolution, as well as an obligation for the platforms to provide information to the publishers.

> ***"Art. XI.216/2, § 2***
>
> *L'éditeur de presse et le prestataire de services de la société de l'information doivent négocier de bonne foi en ce qui concerne les exploitations visées au paragraphe 1er et la rémunération due à cet égard, pour autant que et dans la mesure où l'éditeur de presse est disposé à autoriser les exploitations précitées.*
>
> *En l'absence d'accord, la partie la plus diligente peut faire appel à la procédure de règlement des litiges devant l'Institut belge des services postaux et des télécommunications, visée à l'article 4 de la loi du 17 janvier 2003 concernant les recours et le traitement des litiges à l'occasion de la loi du 17 janvier 2003 relative au statut du régulateur des secteurs des postes et télécommunications belges, au cours de laquelle la rémunération pour les exploitations visées au paragraphe 1er peut être décidée et où une décision administrative contraignante telle que visée à l'article 4 précité peut être prise."*
>
> ***"Art. XI.216/2, § 3***
>
> *Le prestataire de services de la société de l'information fournit, à la demande écrite de l'éditeur de presse, des informations actualisées, pertinentes et complètes sur l'exploitation des publications de presse afin que l'éditeur de presse puisse évaluer la valeur du droit visé au paragraphe 1er. En particulier, le prestataire de services de la société de l'information fournit des informations sur le nombre de consultations des publications de presse et sur les revenus que le prestataire de services de la société de l'information tire de l'exploitation des publications de presse.*
>
> *Les informations sont fournies dans un délai d'un mois à compter du jour suivant la notification de la demande écrite de l'éditeur de presse.*
>
> *Les informations fournies ne seront en aucun cas utilisées à d'autres fins que l'évaluation du droit visé au paragraphe 1er et l'attribution d'une part appropriée de cette rémunération visée au paragraphe 6. Les informations fournies sont traitées de manière strictement confidentielle.*"

Regarding the obligation to negotiate, the Explanatory Memorandum (p. 74-75 DOC 55 2608/001) emphasizes the exclusive nature of the press publishers right:

"Le paragraphe 2 prévoit que les éditeurs de presse d'une part et les plateformes d'autre part doivent négocier de bonne foi. Comme mentionné ci-dessus, la directive prévoit un nouveau droit exclusif dans le chef des éditeurs de presse. Cela signifie donc qu'une plateforme doit obtenir l'autorisation du titulaire de droits (en l'occurrence l'éditeur de presse) si elle souhaite reproduire ou communiquer au public une publication de presse, sauf si une exception s'applique. Cela signifie également que la plateforme sera probablement redevable d'une rémunération à l'éditeur de presse.

En vertu de la liberté contractuelle, cela peut se faire via un accord de licence entre l'éditeur d'une part et la plateforme d'autre part. Si les parties ne parviennent pas à un accord, la publication de presse ne peut en principe pas être utilisée car elle est protégée par le droit exclusif. La loi précise seulement que les négociations doivent être menées de bonne foi. Cela signifie également que si l'une des deux parties propose de négocier, l'autre partie doit entamer la négociation de bonne foi."

On the basis of an adopted amendment to the initial text of Article XI.2016/2, § 3 CEL, it is clarified that the obligation to negotiate only applies "*insofar as and to the extent that the press publisher is prepared to authorise the aforementioned exploitations*". The amendment has been given the following reasoning (p. 2-3 DOC 55 2608/002):

"Il est important que l'exercice du droit de l'éditeur de presse demeure exclusivement entre les mains de l'ayant droit (à savoir l'éditeur). Chaque éditeur établit en effet sa politique en ce qui concerne la mesure et les conditions dans lesquelles un contenu numérique peut être mis à disposition à un autre endroit que sur son propre site web. Il convient dès lors de ne pas glisser (involontairement) dans la loi d'obligation imposant aux éditeurs de négocier des exploitations qui seraient contraires à leur propre politique stratégique. Cette mise en œuvre du droit de l'éditeur porterait en effet atteinte au caractère exclusif du droit de l'éditeur, prévu par la directive sur le marché unique numérique, et réduirait le droit exclusif à un droit à rémunération.

L'actuel article XI.216/2, § 2, CDE en projet présente bel et bien ce risque, car il oblige implicitement les éditeurs de presse à entamer des négociations à propos des contenus pour lesquels ils ne souhaitent ou ne peuvent pas octroyer de licence. Les auteurs s'efforcent, au travers d'une petite modification et précision, de sauvegarder le caractère exclusif du droit de l'éditeur et de le remettre en conformité avec la teneur et l'intention de l'article 15 de la directive sur le marché unique numérique."

Regarding the obligation to inform, the Explanatory Memorandum (p. 75 DOC 55 2608/001) clarifies :

"*Afin de faciliter les négociations entre les deux parties, le troisième paragraphe prévoit une obligation d'information de la part du prestataire de services de la société de l'information. Il est disposé que le prestataire de services de la société de l'information doit fournir, à la demande écrite de l'éditeur de presse toutes les informations actualisées, pertinentes et complètes concernant l'exploitation des publications de presse par la plateforme. Il va de soi que la plateforme n'est tenue de fournir que les informations directement liées aux publications de presse dont la partie négociante est détentrice. Plus précisément, la plateforme doit fournir des informations sur le nombre de consultations des publications de presse, tout comme le prestataire de services doit fournir des informations sur les revenus générés par l'exploitation des publications de presse. Ces deux exemples ne sont pas exhaustifs. La règle est que toute information utile, actualisée et pertinente doit être fournie, afin que l'éditeur de presse puisse estimer la valeur de ses publications de presse.*

Le prestataire de services de la société de l'information est tenu de fournir les informations dans un délai d'un mois à compter du jour suivant la notification de la demande écrite de l'éditeur de presse. Un e-mail peut être suffisant à cet égard.

Le troisième alinéa du paragraphe 3 précise que les informations fournies ne peuvent être utilisées qu'aux fins de l'évaluation du nouveau droit exclusif pour les éditeurs de publications de presse d'une part, et de l'évaluation de la part appropriée pour les auteurs dont les œuvres sont utilisées dans la publication de presse d'autre part. Ces informations doivent rester strictement confidentielles. Il convient de rappeler que les éditeurs de presse doivent prendre les mesures appropriées pour assurer la confidentialité. Il peut s'agir par exemple de mesures organisationnelles internes (par exemple, seules certaines personnes ont accès aux informations) ou d'un accord de confidentialité conclu entre l'éditeur de presse d'une part, et le prestataire de services de la société de l'information d'autre part. Cette énumération n'est pas exhaustive."

- The exceptions to the press publishers right are provided for in Art. XI.216/2, § 4 CEL:

"Art. XI.216/2, § 4
La protection accordée en vertu du paragraphe 1er n'est pas applicable:

1° aux actes d'hyperliens;

2° aux utilisations de mots isolés ou de très courts extraits d'une publication de presse;

3° aux utilisations d'œuvres ou de prestations dont la protection a expiré."

As regards the concept of 'very short extracts' (which are not covered by the right), the Explanatory Memorandum (p. 76-77 DOC 55 2608/001) recalls that the press publishers right aims to protect the investments of press publishers. The question whether the extract as such has an economic value, will be an important element of interpretation when determining whether or not the extract is a 'very short extract. This interpretation is supported by recitals 55 and 58 of the Directive. The Explanatory Memorandum states that in the light of the above, for example, an extract of a certain number of characters (for example 200 characters, irrespective of whether this concerns the title or the text of the press publication), or works of graphic and visual art that are specifically included in a press publication, such as press photos or cartoons, may in most cases not be considered a "very short extract".

There is a presumption in the law regarding the identity of the press publisher.

> ***"Art. XI.216/2, § 5***
> *Est présumé éditeur de presse, sauf preuve contraire, quiconque apparaît comme tel sur la publication de presse, sur une reproduction de la publication de presse, ou en relation avec une communication au public de celle-ci, du fait de la mention de son nom ou d'un sigle permettant de l'identifier."*

Authors of works that are incorporated in press publications are entitled to a fair share of the remuneration received by the press publishers. It is stipulated that the appropriate share is determined via a collective agreement and the right to an appropriate share of the remuneration can only be exercised via a management company (on the journalists' side[2]). No specific percentage for the appropriate share is provided for in the draft bill. An information obligation for publishers is provided for, as well as a dispute resolution mechanism before a Commission, which, however, can only be invoked after an attempt at mediation has been made.

> ***"Art. XI.216/2, § 6***
> *Les auteurs d'œuvres intégrées dans une publication de presse ont droit à une part appropriée de la rémunération que les éditeurs de presse perçoivent des prestataires de services de la société de l'information pour l'utilisation de leurs publications de presse.*
>
> *La part de la rémunération, visée à l'alinéa 1er, à laquelle les auteurs ont droit, est incessible.*

[2] The publishers are not subject to a mandatory collective management of the publishers right.

La part de la rémunération visée à l'alinéa 1er est déterminée conformément à une convention collective entre les éditeurs de presse d'une part et les auteurs, visés à l'alinéa 1er, d'autre part.

La gestion du droit à une part appropriée de la rémunération visée à l'alinéa 1er ne peut être exercé que par des sociétés de gestion et/ou des organismes de gestion collective qui ont une succursale en Belgique.

Dans les conditions qu'Il détermine, le Roi peut charger une société de gestion représentative de l'ensemble des sociétés de gestion et organismes de gestion collective gérant en Belgique le droit à rémunération, visé à l'alinéa 1er, de la conclusion de la convention collective, visée à l'alinéa 3, et de la perception et la répartition de cette rémunération."

"Art. XI.216/2, § 7
L'éditeur de presse fournit, à la demande écrite des sociétés de gestion ou des organismes de gestion collective visés au paragraphe 6, des informations actualisées, pertinentes et complètes sur la rémunération que l'éditeur de presse perçoit du prestataire de services de la société de l'information.

Les informations sont fournies dans un délai d'un mois à compter du jour suivant la notification de la demande écrite de la société de gestion ou de l'organisme de gestion collective.

En aucun cas, les informations fournies ne sont utilisées à d'autres fins que l'évaluation de la part appropriée visée au paragraphe 6. Les informations fournies sont traitées de manière strictement confidentielle."

"Art. XI.216/2, § 8
En l'absence d'un accord sur la part appropriée telle que visée au paragraphe 6, les parties peuvent faire appel à une commission. Cette commission est présidée par un représentant du ministre et est composée de représentants des éditeurs de presse et de représentants des ayants droit. La commission détermine la part appropriée de la rémunération visée au paragraphe 6. Le Roi fixe les modalités d'exécution additionnelles de cette disposition. Le Roi peut fixer la rémunération des membres de cette commission.

La commission visée à l'alinéa 1er ne peut être saisie que s'il est prouvé que les parties ont, à tout le moins, tenté la médiation visée aux articles 1724 à 1737 du Code judiciaire."

The Explanatory Memorandum (p. 80 DOC 55 2608/001) clarifies the workings of the commission:

> *"Le paragraphe 8 prévoit que lorsque les parties restent dans l'impasse, il peut être fait appel à une Commission. Cette Commission est présidée par un représentant du ministre et est composée de représentants des éditeurs de presse d'une part et de représentants des auteurs d'autre part. Cette Commission a avant tout un rôle de facilitation dans la conclusion d'un accord entre les parties. En l'absence d'un accord, la Commission peut*
> *prendre une décision finale et fixer la part appropriée de la rémunération des auteurs. Le Conseil d'État remarque dans son avis que le texte de la loi doit clarifier que cette Commission ne peut pas refuser de déterminer la part appropriée de la rémunération. Si la Commission pouvait refuser de se prononcer, il serait fait défaut au principe d'égalité et de non-discrimination. Le texte de la disposition légale a donc été modifié en conséquence.*
>
> *Il convient à cet égard de préciser qu'avant que les parties puissent saisir cette Commission, elles doivent être en mesure de démontrer qu'elles ont au moins tenté une médiation. Le ou les médiateurs peuvent soutenir la négociation entre les parties en vue de parvenir à un accord.*
>
> *Le Roi fixe les modalités d'application de cette disposition. Il peut, entre autres, fixer des délais et désigner les membres de la Commission. Il peut également déterminer les indemnités qui peuvent éventuellement être versées aux membres de la Commission."*

- The protection is limited to a duration of two years:

> ***"Art. XI.216/3***
> *Art. XI.216/3. Les droits visés à l'article XI.216/2, § 1er, expirent deux ans après que la publication de presse ait été publiée.*
>
> *Ce délai est calculé à compter du 1er janvier de l'année suivant la date à laquelle la publication de presse a été publiée.*"

To note: press publishers are not regarded to be right holders under Article 17.

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

139. Art. XI.216/1 § 1, *in fine* CEL provides that periodical publications published for scientific or academic purposes, such as scientific journals, shall not be regarded as press publications. As such, these will not benefit the protection.

> ***"Art. XI.216/1, § 1***
> *Aux fins de la présente section, on entend par "publication de presse" une collection composée principalement d'œuvres littéraires de nature journalistique, mais qui peut également comprendre d'autres œuvres ou prestations, et qui:*
>
> > *a) constitue une unité au sein d'une publication périodique ou régulièrement actualisée sous un titre unique, telle qu'un journal ou un magazine généraliste ou spécialisé;*
> >
> > *b) a pour but de fournir au public en général des informations liées à l'actualité ou d'autres sujets; et*
> >
> > *c) est publiée sur tout support à l'initiative, sous la responsabilité éditoriale et sous le contrôle d'un prestataire de services.*
>
> *Les périodiques qui sont publiés à des fins scientifiques ou universitaires, tels que les revues scientifiques, ne sont pas considérés comme des publications de presse.*

Acts in the field of hyperlinking on the other hand, constitute one of the categories of acts which are not subject to the protection granted by the new neighboring right (Art. XI.216/2, § 4 CEL).

> ***"Art. XI.216/2, § 4***
> *La protection accordée en vertu du paragraphe 1er n'est pas applicable:*
>
> > *1° aux actes d'hyperliens;*
> >
> > *2° aux utilisations de mots isolés ou de très courts extraits d'une publication de presse;*
> >
> > *3° aux utilisations d'œuvres ou de prestations dont la protection a expiré."*

Brussels,7 September 2022

[end]