



ALAI questionnaire 2022 – Answers Germany¹

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Panel I: Performer's rights – a comparative overlook

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

In German law there is no differentiation between different types of performers. The term “performer” is an autonomous concept of Union law.² The interpretation of the CJEU also corresponds to § 73 UrhG, which stipulates that any person “who performs, sings, acts or in another manner presents a work or an expression of popular art, or who participates artistically in such a presentation” is protected as performer.

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

Because there is no differentiation between different types of performers all of them enjoy equal Neighbouring Rights' protection.

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

According to § 73 UrhG, both persons who present a work and persons who participate in such a presentation are equally protected. While non-featured performers are not explicitly mentioned, Germany has implemented Art. 1 (2) EU Directive 2011/77/EU by § 79a (1) UrhG that is basically aimed at non-featured artists.

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

All performers enjoy exclusive rights as well as several remuneration rights:

¹ All citations of the German Copyright Act (Urheberrechtsgesetz, UrhG) of 1965 (as last amended June 23, 2021) are taken from the unofficial English translations by Ute Reusch available at https://www.gesetze-im-internet.de/englisch_urhg/index.html.

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² CJEU C-265/19, ECLI:EU:C:2020:677 paragraphs 48, 53 – *Recorded Artists Actors Performers*.

Exclusive rights:

- right of fixation (§ 77 I UrhG)
- right of reproduction and of distribution of such fixations, including rental (§ 77 II 1 UrhG)
- right of making the performance available to the public (§§ 78 I no. 1, 19a UrhG)
- right of broadcasting (unless the performance has been legally fixed on video or audio recording mediums which have been released or legally made available to the public, § 78 I no. 2 UrhG); however, the exclusive right to retransmission (§ 20b I UrhG) can only be asserted by collecting societies (§ 78 IV UrhG)
- right of making their performance perceivable to the public by screen, loudspeaker or similar technical devices in a place other than that in which it takes place (§ 78 I no. 3 UrhG).

Remuneration rights:

- in the case of broadcasting of performances which have been legally fixed on video or audio recording mediums which have been released or legally made available to the public (§ 78 II no. 1 UrhG)
- when a performance is communicated to the public by means of video or audio recording mediums (§ 78 II no. 2 UrhG)
- when the broadcast or the communication of their performance which is based on the making available to the public is made perceivable to the public (§ 78 II no. 3 UrhG)
- Lending (§§ 77 II 2, 27 II UrhG), if fixations of performances are publicly lent by a publicly accessible institution (library, collection of video or audio recordings or other originals or copies thereof)
- Moreover, performers enjoy separate statutory remuneration rights in addition to exclusive rights (to remedy a weak contractual position, based on the model of Art. 5 EC Rental Rights Directive) in the cases of
 - Rental (§§ 77 II 2, 27 I UrhG)
 - Retransmission (§§ 78 IV, 20b II UrhG)
 - Supplementary remuneration concerning prolonged term of protection (§ 79a UrhG), and for types of use which become subsequently known (§ 79b UrhG), and
 - Communication to the public licenced to Online Content Sharing Service Providers under the German Act on the Copyright Liability of Online Content Sharing Service Providers³ (Urheberrechts-Diensteanbieter-Gesetz, UrhDaG) (§§ 4 III, IV, 21 II UrhDaG). (German labels recently announced a Constitutional Complaint against § 4 III UrhDaG)

Moral Rights:

In addition, under German Law, performers do enjoy moral rights protection. These moral rights include

- The right to be recognized as a performer in relation to his or her performance (§ 74 UrhG). The performer may thereby determine whether and with which name he or she is to be identified. If a work is performed by several performers together and if identifying each of them individually involves a disproportionate amount of effort, they can only ask to be named

³ English unofficial translation by Ute Reusch available at https://www.gesetze-im-internet.de/englisch_urhdag/index.html.

as a group of artists. If the group of artists has an elected representative, the latter is the sole representative in respect of third parties. If a group has no such representative, the right may only be asserted by the leader of the group and, if there is none, only by a representative to be elected by the group. The right of a participating performer to be individually named remains unaffected in the case of a special interest. In the case of a contribution to a film work, it is not necessary to name each performer if this necessitates disproportionate effort (§ 19 II UrhG).

- The right to prohibit derogatory treatment of his or her performance (§ 75 UrhG). However, this right is not absolute, but only can be exercised in cases in which a particular distortion or other derogatory treatment of the performance is of such a nature as to jeopardise the performer's standing or reputation. If a work is performed by several performers together, each performer takes the others into due account when exercising the right. In the case of a contribution to a film work, a performer may only assert this right if there is a gross distortion or other derogatory treatment, and he or she has to take the others and the film producer into due account when exercising the right (§ 93 I UrhG).

The exclusive and remuneration rights expire (§ 82 UrhG), where a performance has been recorded on an audio medium, 70 years after the release of the audio recording or, if its first legal use for communication to the public took place earlier, 70 years after the latter. Where the performance was not recorded on an audio medium, the rights of the performer expire 50 years after the release of the recording or, if its first legal use for communication to the public occurred earlier, 50 years thereafter. However, the performer's rights already expire 50 years after the performance if a recording has not been released or not legally used for communication to the public within that period.

The moral rights referred to expire (§ 76 UrhG) upon the performer's death, but not before 50 years have passed since the performance if the performer has died prior to expiry of that period of time, and not prior to expiry of the period applicable to the exploitation rights of § 82 UrhG. If a work is performed by several performers together, the death of the last of the participating performers is decisive. After the performer's death, the rights belong to his or her next of kin (see § 60 II).

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

The rights mentioned in the answer to question 4. are all statutorily enshrined, see already above.

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

See Answer to question 4.

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

According to § 83 UrhG, all exceptions/limitations defined in §§ 44a–61g UrhG (including orphan works and works out-of-print) equally apply to the exclusive rights of performers.

Remuneration rights are therefore granted in case of

- reproductions/distributions for disabled persons (§ 45a II UrhG). If authorised entities reproduce performances in text or audio format to convert them to an accessible format for

persons with visual or reading disabilities, or lend, distribute and make these reproductions available to the public, appropriate remuneration shall be paid (§ 45c IV UrhG).

- The same applies to collections for religious use (§ 46 IV UrhG),
- for school broadcasts if their fixations are not deleted at the end of the next school year (§ 47 II 2 UrhG),
- for newspaper articles and radio commentaries, unless the reproduction, distribution and communication to the public is of short extracts of several commentaries or articles in the form of an overview (§ 49 I 2 UrhG),
- in case of communications to the public (§ 52 I 2 UrhG).
- An obligation for remuneration also exists if the nature of the performance gives rise to the expectation of a reproduction permitted by § 53 I, II UrhG (reproductions for private and other personal uses, § 54 UrhG) or §§ 60a–60f UrhG permitted uses for education, science and institutions according to §§ 60a–60f UrhG (§ 60h UrhG).
- Finally, new claims for remuneration have been introduced by the UrhDaG against online service providers
 - for the communication to the public of caricatures, parodies and pastiches (§ 51a), which in general do not entail a claim for remuneration (§§ 5 I 2, II, 21 UrhDaG)
 - as well as for the communication to the public of uses presumably authorised and of minor uses according to §§ 9–11, 21 UrhDaG (§ 12 I UrhDaG).

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

The exclusive exploitation rights under §§ 77, 78 UrhG (see above, 4.) may be transferred to producers according to § 79 UrhG. The transfer of rights may be limited in time.

The remuneration claims granted by § 78 II UrhG (see also above, 4.) may not be waived by the performers in advance. They may only be assigned in advance to a collecting society. Similar rules apply in general to separate remuneration claims as well as to claims for remuneration in the case of limitations/exceptions.

In addition, it should be noted that certain rights of performers are limited once the making of a film has started (§§ 92 III, 90 UrhG). These limitations concern the transfer of rights of use (§ 34 UrhG), the grant of further rights of use (§ 35 UrhG) and the rights of revocation for non-exercise of rights granted and of changed conviction (§§ 41 and 42 UrhG; however, before filming commences an agreement may be reached with the author to rule out the right of revocation for non-exercise for a period of up to five years). Moreover, the right to other exploitation after 10 years in the case of flat-rate remuneration (§ 40a UrhG) does not apply.

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

There is no general legal presumption of transfer. According to § 79 I UrhG, performers can transfer their rights on a voluntary/contractual basis. However, there are some rights whose transferability is limited, § 79 I 2 UrhG in connection with § 78 III, IV UrhG (see also Part I, answer to question 10., below).

However, an exception applies under § 92 I UrhG if performers conclude a contract with film producers for participation in the production of an audiovisual work. In case of doubt, with regard to the exploitation of the audiovisual work, this contract grants the right to use the performance in one of

the ways reserved for the performer under § 77 I, II 1 UrhG and § 78 I no. 1, 2 UrhG. In addition, if the performer has assigned in advance such a right or granted to a third party a right of use therein, the performer nevertheless retains the entitlement to assign or grant this right to the producer of the film in respect of exploitation of the cinematographic work (§ 92 II UrhG).

Also, there are legal assumptions in the transitory provisions, such as §§ 137c and 137m UrhG.

10. Are there any unwaivable and inalienable remuneration rights?

Note: In the question, it should probably read “unwaivable” instead of “unavailable”.

As regards the remuneration rights granted to performers according to § 78 II UrhG (see above, answer to question 4), performers may not waive the claims to remuneration in advance. Moreover, they may only assign their remuneration claims in advance to a collecting society.

Similarly, under German law, statutory remuneration rights in the case of exceptions and limitations may also not be waived in advance, and they may also be assigned in advance only to a collecting society (§ 63a UrhG). The same is true for those under §§ 4 III, 21 UrhDaG.

However, a distinction has to be made between statutory remuneration rights and any claims for money based on the exercise of such remuneration rights, which like any other claim for money against a third party, is freely transferable.

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

In the case of transfer of rights and claims and granting of rights of use of performers, the general provisions of contract under copyright law are applicable (§ 79 IIa UrhG). This includes a claim to appropriate remuneration (§ 32 UrhG) as well as a claim for further participation where the performer has granted to another a right of use on conditions which, taking into account the author’s entire relationship with the other party, result in the agreed remuneration proving to be disproportionately low in comparison to the proceeds and benefits derived from the use of the performance (§ 32a UrhG). Moreover, where a performer has granted or transferred rights in a performance to a producer of an audio medium against payment of a one-time fee, the producer of the audio medium is required to pay the performer additional remuneration in the amount of 20 per cent of the income which the producer of the audio medium earns from the reproduction, the sale and the making available to the public of the audio medium containing the performance. This right to remuneration exists for each full year immediately following the 50th year after publication of the audio medium containing the performance or, if it was not published, following the 50th year after its first legal use for communication to the public (§79a UrhG).

Remuneration to be paid on the basis of claims for remuneration which can only be asserted by a collecting society is negotiated by way of either contracts with associations of users at reasonable conditions (inclusive contracts; Gesamtverträge, § 35 VGG⁴) or by way of setting tariffs for the rights it manages (§ 38 VGG). The tariffs which are initially unilaterally set by collecting societies are subject to

⁴ Act on the Management of Copyright and Related Rights by Collecting Societies (Verwertungsgesellschaftengesetz, VGG), available at https://www.gesetze-im-internet.de/englisch_vgg/index.html.

review by an Arbitration Board (§§ 92 et seq. UrhG) the settlement proposals of which are subject to judicial review (§§ 128 et seq. VGG).

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

Under German law, the activity of “streaming” is considered as an act of making the performance available to the public (§§ 78 I no. 1, 19a UrhG in on-demand-services and § 19 UrhG if linear (re-)transmission via the Internet is in question). At the end of the provider, streaming is preceded by an act of reproduction (storing the performance to be streamed on the provider’s server). At the end of the consumer a reproduction takes place when the signals streamed are recorded (permissible as a private copy, § 53 UrhG). Moreover, since receiving the streaming signals involves a successive storage of the signals temporarily in the receiving computer’s buffer or cache, this likewise constitutes a reproduction. However, these latter acts of partial reproduction are considered as acts of reproduction which are an integral and essential part of a technical process and whose purpose is to enable a lawful use and are thus covered by the respective limitation (§ 44a UrhG).⁵

Also, it should be noted that according to the CJEU, even smallest parts may be protected by neighbouring rights.⁶

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

As an act covered by an exclusive right (see question 12), streaming requires the consent of the holders of rights in the content streamed, including the consent of performers.

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

In Germany there only are statistics on the cases filed in court regarding copyright infringements.⁷ However, it is to be assumed that not all cases of copyright infringement find their way to the courts.

According to a European study of the EUIPO, the number of accesses to piracy sites declined in the last years.⁸ Compared to the European average, the rate of accesses to piracy in Germany is relatively low with only 4.0 accesses per user per month.⁹

⁵ See CJEU C-360/13, ECLI:EU:C:2014:1195 – *Public Relations Consultants Association*.

⁶ CJEU, C-476/17, ECLI:EU:C:2019:624 – *Pelham et al.*

⁷ See on proceedings in civil courts:
https://www.statistischebibliothek.de/mir/receive/DESerie_mods_00000101?list=all (accessed 10 June 2022); see on proceedings in criminal courts:
https://www.statistischebibliothek.de/mir/receive/DESerie_mods_00000107?list=all (accessed 10 June 2022).

⁸ EUIPO, Online Copyright Infringement in the European Union, 2021, 34 et seq.
https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/quantification-of-ipr-infringement/online-copyright-infringement-in-eu/online_copyright_infringement_in_eu_en.pdf (accessed 10 June 2022).

⁹ EUIPO, Online Copyright Infringement in the European Union, 2021, 39, https://euipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/quantification-of-ipr-infringement/online-copyright-infringement-in-eu/online_copyright_infringement_in_eu_en.pdf (accessed 10 June 2022).

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

As far as is known, digital platform providers do not report on the economic return generated by advertising with regard to protected performances uploaded by the platform users (that is, unless platforms are under an obligation to do so under national duties of public companies to report such figures).

The same is true for the phonogram producers who by way of either licensing their musical content to the platform providers or by way of monetising it (by receiving a share of the advertising income generated by the platform provider in connection with the content posted by the platform users) are remunerated by the platform providers.

Finally, no exact figures are known to the general public concerning which portion of these proceeds the phonogram producers pay to individual performers. However, it should be noted that where the performer has granted a license in return for payment, then at least once a year the contracting party provides the performer with information about the extent of the use of the performance and the proceeds and benefits derived therefrom. The information is provided on the basis of that information which is generally available in the ordinary course of business activities. Such information is to be provided for the first time one year after the use of the performance commences and only for the duration of its use. But as regards revenue generated by sub-licensees, the contracting party only needs to provide the names and addresses of its sub-licensees and to render accountability at the performer's request (§§ 79 IIa, 32d UrhG).

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

In many cases, performers' compensation is calculated according to the collective agreements concluded by the media companies with the trade unions (such as, e.g., in the case of performers employed by broadcasters).¹⁰

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

In Germany, there is no statutory fixation of minimum amounts due.

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

Platforms contribute or will have to contribute such compensation schemes by way of paying license fees (see now Art. 17 I DSM-Directive, § 4 I UrhDaG) and/or by monetizing content (i.e., rightholders may claim a certain share in the advertising income provided by the platform provider in relation to the content posted).¹¹

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

¹⁰ Dreier/Schulze/Dreier § 79 UrhG Rn. 11.

¹¹ See e.g. <https://support.google.com/youtube/answer/7000961> (accessed 10 June 2022).

Although the Beijing Treaty has been signed by Germany on June 20, 2013, it has not yet been ratified. However, the minimum protection contained therein is already implemented by German law.

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

In general, CMOs are able to manage all kinds of exploitation rights on behalf of the rightholders. However, whereas performers usually take care of the first exploitation themselves, mostly in contracts with producers of sound or audiovisual recordings, CMOs take care of secondary exploitation for performers and collect the money from corresponding statutory remuneration claims.¹² Some of the remuneration rights can, by law, only be exercised by CMOs (e.g. the remuneration right in case of rental and lending, § 27 III UrhG in conjunction with § 77 II 2 UrhG or the right of retransmission, § 20b UrhG in conjunction with § 78 IV UrhG as well as the statutory remuneration rights in the case of exceptions and limitations), others are collected on the basis of a corresponding agreement between individual performers and a CMO.

21. Which CMOs represent performers in your Country?

In Germany, the GVL (Gesellschaft zur Verwertung von Leistungsschutzrechten mbH, <https://gvl.de/>) is responsible for the administration of rights of performers.

22. Do these CMOs comply with transparency principles?

CMOs must comply with transparency principles in the form of obligations of information and reporting specified in the Act on Collecting Societies (§§ 53 et seq. VGG).

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

The income generated from the individual rights must be disclosed in the transparency reports of the CMOs, § 58 II UrhG and Annex. The transparency reports of the different CMOs can be found on their websites. See e.g. the report of the GVL for 2021: https://gvl.de/sites/default/files/2022-06/GVL_Transparenzbericht_2021_DE.pdf.

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

In Germany, the cases filed in court regarding copyright infringements are registered (see already above question 14). However, in the civil courts' statistic, disputes on the basis of the UrhG are not listed separately.¹³ Although this is the case for the criminal court statistic, there is no differentiation as to whether the infringement is related to copyright or neighbouring rights of performers, phonogram producers or the like.¹⁴

¹² Cf. Dreier/Schulze/Raue Vor § 1 VGG Rn. 3.

¹³ See https://www.statistischebibliothek.de/mir/receive/DESerie_mods_00000101?list=all.

¹⁴ See https://www.statistischebibliothek.de/mir/receive/DESerie_mods_00000107?list=all.

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

In 2016, the BGH commented on the scope of National Treatment under the Rome Convention.¹⁵

In 2014, the BGH confirmed the practice of valuing the remuneration claim of performers and phonogram producers for the public performance of recorded music by a 20% add-on on the remuneration payable to music authors as appropriate.¹⁶ The same 20% add-on has been confirmed for the valuation of reproduction rights for purposes of public performance by the Arbitration Board (see question 27).¹⁷

Most important, however, there are several decisions by the CJEU regarding performers' rights. According to the CJEU, the term "performer" is an autonomous term of Union law.¹⁸ The European Court of Justice also had to decide on the communication to the public of audiovisual works contained in audiovisual recordings.¹⁹ The European Court of Justice also ruled on the admissibility of a statutory presumption that the performers permit the recording and exploitation of their performances when they participate in the recording of an audiovisual work intended for broadcasting.²⁰

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

According to the CJEU, all citizens of other EU Member States enjoy the same protection for their performances as nationals.²¹

Other foreigners, however, enjoy protection for their performances only in accordance with § 125 UrhG. Accordingly, they generally enjoy protection according to the relevant treaties (§ 125 V UrhG), and beyond that, for all performances made in Germany (§ 125 II UrhG). In addition, they enjoy protection for those performances that have been published in Germany no later than 30 days after their publication abroad or have been broadcasted in Germany (§ 125 III, IV UrhG). However, it should be noted that these latter provisions might be in conflict with EU law, since the CJEU held that at least with regard to the WIPO Performances and Phonograms Treaty (WPPT) EU Member States are not allowed to discriminate against nationals of States outside the EU and the European Economic Area (EEA).²² This holding certainly applies to nationals from other WPPT-Member States, but possibly also to performers of any other Member State.

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

According to § 32 UrhG, authors shall be entitled to "equitable remuneration" in the case of the granting of rights of use. According to § 79 IIa UrhG, this provision also applies to performers.

¹⁵ BGH, April 21, 2016 – I ZR 43/14 – An Evening with Marlene Dietrich, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=75454&pos=0&anz=1>.

¹⁶ BGH, June 18, 2014, – I ZR 215/12 – Gesamtvertrag Tanzschulkurse.

¹⁷ Schiedsstelle nach dem Verwertungsgesellschaftengesetz, July 7, 2021, Sch Urh 08/18.

¹⁸ CJEU, ECLI:EU:C:2020:677 – *Recorded Artists Actors Performers*.

¹⁹ CJEU, ECLI:EU:C:2020:935 – *Atresmedia Corporación de Medios de Comunicación*.

²⁰ CJEU, ECLI:EU:C:2019:970 – *Spedidam*.

²¹ CJEU C-92/92 – *Phil Collins*.

²² See CJEU, C-265/19, ECLI:EU:C:2020:677 – *Recorded Artists Actors Performers*.

In the case of the administration of rights by CMOs, appropriate tariffs must be established (§ 38 VGG). In the event of a dispute, the Arbitration Board shall first decide on the appropriateness of the remuneration (§§ 92 et seq. VGG) and subsequently, if necessary, the courts (§§ 128 et seq. VGG).

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

CMOs in Germany usually have a de facto monopoly position (i.e., only one CMO exists for a particular type of rightholder). Their mandates are usually exclusive. However, it is possible to limit CMO's power of administration to certain rights.

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

As regards contracts of performers with CMO, in accordance with § 12 VGG, transfer of rights agreements may be terminated in whole or in part with a notice period of no more than six months.

As regards individual contracts between performers and users, performers enjoy a right of revocation for non-exercise (§ 41 UrhG) and of revocation for changed conviction (§ 42 UrhG), both applicable to performers according to § 79 IIa UrhG. Also, there is the right to revoke a performance from collective administration, such as in the case of § 51 II VGG (extended collective licensing).

30. Are there any provisions on contractual remuneration adjustments?

CMOs have tariff sovereignty and are obliged to conclude contracts on reasonable terms and, in particular, to establish tariffs (§ 38 VGG) according to certain criteria (§§ 39, 40 VGG) and to conclude inclusive contracts (§ 35 VGG, see already above, answer to question 11). If CMOs violate these obligations, they owe adjustments of contracts according to the general provisions of civil law.

Regarding the contractual relationship between performers and users, where a performer has granted to another a right of use on conditions which result in the agreed remuneration proving to be disproportionately low in comparison to the proceeds and benefits derived from the use of the performance, the other party is obliged, at the performer's request, to consent to a modification of the agreement which grants the performer further equitable participation appropriate to the circumstances. In this respect, it is irrelevant whether the parties to the agreement had foreseen or could have foreseen the amount of the proceeds or benefits obtained (§§ 32a I, 79 IIa UrhG). Also the general rules on contractual remuneration under §§ 32 ff UrhG are applicable to performers (§ 79 IIa).

In addition, performers have a right to separate equitable remuneration if their contracting party commences a new type of use of their performance which was agreed but not known at the time the contract was concluded (§ 79b I UrhG).

Panel II – Phonogram Producer's Rights

1. Which rights are awarded to phonogram producers?

Phonogram producers have the exclusive rights to reproduce, distribute and make the phonogram available to the public (§ 85 UrhG). Other rights, such as the right to broadcast, are not awarded to

phonogram producers as exclusive rights. However, phonogram producers are entitled to participate in the remuneration a performer receives (see Panel I, answer to question 4) from the public communication of the performance recorded on a phonogram (§ 86 UrhG).

In addition, phonogram producers are also entitled to equitable remuneration for lending (§§ 27 II, § 85 IV UrhG). However, such a statutory remuneration right does not apply in the case of rental. Rather, in the case of rental the phonogram producer has to negotiate his remuneration when granting use rights with regard to his exclusive rental right.

The right expires 70 years after the release of the audio recording. If the audio recording was not released within 70 years after production but was used legally for communication to the public, the right expires 50 years after the latter. If the audio recording has not been released or legally used for communication to the public during that period, the right expires 50 years after the production of the audio recording (§ 85 III UrhG)

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

The rights mentioned are statutory rights.

3. Which of them are exclusive/remuneration rights?

The rights to reproduce, distribute (and rent, after exhaustion of the distribution right) and make the phonogram available to the public under § 85 UrhG are exclusive rights. The right of communication to the public is designed as a participation in the remuneration of the performer (§ 86 UrhG, see already above question 1).

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

According to § 85 IV UrhG, the limitations of §§ 44a–61g UrhG and related remuneration rights apply accordingly. Thus, also phonogram producers are entitled to the same statutory remuneration claims as authors, see already above in the connection with the rights of performers (Panel I, answer to question 7).

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

The exploitation rights under § 85 I UrhG are transferable (§ 85 II UrhG). In principle, the transfer is made on a voluntary basis. According to §§ 85 II 2, 38 I, II UrhG, in the case of contributions to collections, there is a legal presumption that an exclusive right of use has been granted.

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

In the case of transfer of rights and claims and in the case of granting of rights of use, some core provisions of contract law regarding authors and performers (§§ 31, 33 and 38 UrhG) are likewise applicable to phonogram producers (§ 85 II 3 UrhG).

However, since the phonogram producer's right is a pure property right and phonogram producers are not in the same need of protection as authors and performers, the provisions on contracts concerning unknown types of use, equitable remuneration, further participation, remuneration for types of use which subsequently become known and all corresponding claims for information are not applicable to phonogram producers. Therefore, compensation in the case of phonogram producers is calculated on a contractual basis.

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

Insofar as phonogram producers have their rights administered by CMOs, compensation shall be based on the established tariffs. The compensation in detail is then determined in accordance with the distribution plans of the respective CMO (§ 27 VGG).

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

In Germany, there is no statutory fixation of minimum amounts due.

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

Although it generally appears that online music streaming services (Spotify, iTunes, etc.) have severely reduced the rate of illegal P2P-files sharing, the phonogram industry still sees a continuing threat to copyright and neighbouring rights from digital piracy and especially streamripping.²³

10. Which rights are currently being collected via CMOs?

The remuneration claims of phonogram producers are generally handled by CMOs.

11. Which CMOs represent phonogram producers in your Country?

Phonogram producers in Germany are represented by the GVL (see already above, Panel I question 21 regarding performing artists).

12. Do these CMOs comply with transparency principles?

See already above, Panel I question 22 regarding performers.

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

²³ See e.g. IFPI, the Music Listening 2019 report, 21, <https://www.ifpi.org/wp-content/uploads/2020/07/Music-Listening-2019-1.pdf> (accessed 10 June 2022); PRS, Stream-ripping report 2020, <https://www.prsformusic.com/-/media/files/prs-for-music/research/full-stream-ripping-research-report-2020.pdf> (accessed 10 June 2022).

Figures are only publicly available as far as rights administered by CMOs are concerned (see already above, Panel I question 23 regarding performing artists). In Germany, the income generated from the individual rights is disclosed in the transparency reports of the GVL.²⁴

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

See already above, Panel I question 24 regarding performing artists.

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

With regard to phonogram producers' rights, one case has dominated the jurisprudence of the German courts in recent years. In the case *Pelham/Metall auf Metall*, various courts (most recently e.g. OLG Hamburg [Higher Regional Court]²⁵, BGH²⁶, CJEU²⁷, BverfG [German Federal Constitutional Court]²⁸) have dealt with one and the same case of phonogram sampling.²⁹ This case mainly is about the question of protectability of even smallest parts of a phonogram (delimitation via the characteristic of recognisability).³⁰ Finally, the CJEU held that the German regulation on "free use" under § 24 UrhG (old version)³¹ was incompatible with EU law, at least to the extent to which it allowed the taking of recognisable parts of a phonogram. The legal dispute is still continuing. The next issue to be dealt with by the BGH will be the question of whether sampling can be classified as a form of pastiche under § 51a UrhG.³²

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

According to § 12 VGG, transfer of rights agreements with CMOs may be terminated in whole or in part with a notice period of no more than six months (see already above, Panel I, answer to question 29 regarding performing artists).

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

²⁴ See, e.g., for 2021 https://gvl.de/sites/default/files/2022-06/GVL_Transparenzbericht_2021_DE.pdf.

²⁵ OLG Hamburg, 28.04.2022 – 5 U 48/05 – *Metall auf Metall III*.

²⁶ BGH, 30.04.2020 – I ZR 115/16 – *Metall auf Metall IV*, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=107050&pos=0&anz=1>.

²⁷ CJEU, 29.07.2019 – C-476/17, ECLI:EU:C:2019:624 – *Pelham/Hütter*, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=216552&pageIndex=0&doclang=EN&m ode=req&dir=&occ=first&part=1>.

²⁸ BverfG, 31.05.2016 – 1 BvR 1585/13 – *Metall auf Metall*, https://www.bundesverfassungsgericht.de/SharedDocs/Downloads/EN/2016/05/rs20160531_1bvr158513en.pdf?__blob=publicationFile&v=3.

²⁹ An overview of the complete procedural history can be found, for example, under: <https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=31.12.2222&Aktenzeichen=I%20ZR%2074/22>.

³⁰ CJEU, C-476/17, ECLI:EU:C:2019:624 Rn. 29-39 – *Pelham/Hütter*.

³¹ The provision has since been repealed. For the old version see, e.g.: <http://www.buzer.de/gesetz/4838/al147978-0.htm>.

³² BGH, I ZR 74/22.

Under German law, it does not matter whether a phonogram is produced for commercial or non-commercial purposes.

However, it should be noted that if a phonogram which has been either released or legally made available to the public is used for communication of the performance fixed on the phonogram to the public, the producer of the phonogram does not enjoy an exclusive right but only a claim for participation in the proceeds of the performer's remuneration claim (§ 86 UrhG).

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

See already Panel II, question 17.

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

The German courts recognise the combination of audiovisual works with music as an exploitation right that can be exercised separately from other exclusive exploitation rights.³³ Following, e.g., GVL administers a non-exclusive right to make published phonograms available as background music on websites³⁴ as well as the right to authorise the production of individual copies of phonograms for the purpose of conventional radio or television broadcasting by broadcasting organisations in particular for the purpose of the first connection with an audiovisual production of a production of a television broadcaster (in-house or commissioned productions financed entirely by the broadcaster, as well as co-productions, insofar as the television broadcaster is exclusively entitled to the broadcasting rights.³⁵ The CJEU decision C-147/19 (Atresmedia) has set a new standard for the importance of the synchronization right³⁶ in cases where pre-existing sound recordings are made part of a film work.

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

Rights to sound branding (jingles) only exist to the extent that the sounds in question are protected by copyright.³⁷

³³ See, e.g. Court of Appeal of Cologne, ZUM 2007, 401, 403).

³⁴ See § 1 no. 6 of GVL's representation agreement with phonogram producers, https://gvl.de/sites/default/files/2021-12/20211123_Wahrnehmungsvertrag%20TTH_v.7.0_de.pdf.

³⁵ Ibid., § 1 no. 7a.

³⁶ C-147/19 (Atresmedia) marg. no. 55.

³⁷ For German case law on, e.g., the copyright protectability of jingles, see Dreier/Schulze/Schulze, Urheberrecht, 7th ed. 2022. § 2 note 140.

Panel III – Broadcasters and Film/Audiovisual Producers Rights

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

According to § 87 I UrhG, broadcasting organisations enjoy the exclusive rights to retransmit their broadcasts and make them available to the public (No. 1), to record their broadcasts in video or audio form, to produce photographs of them, and to reproduce and distribute the fixations (with the exception of rental) (No. 2), and to make their broadcasts perceivable to the public if access is provided in return for payment (No. 3).

Retransmission in the sense of § 87 I No. 1 UrhG is only the simultaneous wireless or wire retransmission; a deferred retransmission after prior recording is a fixation according to No. 2, the use of which for retransmission is protected via § 96 I UrhG.

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

The rights mentioned are statutory rights (see above, Panel I for performing artists and Panel II for phonogram producers).

3. Which of them are exclusive/ remuneration rights?

The rights of broadcasting organisations under § 87 UrhG are exclusive rights.

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

The rights of broadcasting organisations are limited by the same exceptions and limitations (§§ 44a-61g UrhG) as the exclusive rights of authors, performing artists and phonogram producers (§ 87 IV UrhG).

However, broadcasting organisations do not participate in the remuneration for school broadcastings which are not deleted after the end of the school year according to § 47 II 2 UrhG. They also do not participate in the remuneration for private copying according to § 54 I UrhG (§ 87 IV 2 UrhG).

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

Due to the absence of a moral rights component, the right of the broadcasting organisation is transferable as a whole (§ 87 II 1 UrhG). This transfer is in general voluntary/contractual. There is no legal presumption of transfer.

Moreover, following EU law, broadcasting organisations' retransmission rights are exempt from mandatory exercising by CMOs (§ 20b I 2 no. 2 UrhG). However, in Germany, broadcasting organisations as well as retransmission services are under an obligation to conclude contracts at appropriate conditions regarding retransmission via cable and microwave systems, unless there is objectively justifiable reason to refuse to conclude such a contract and to negotiate in good faith regarding other forms of retransmission (§ 87 V UrhG). The same applies to direct injection (§ 20d

UrhG), i.e., in cases where a broadcasting organisation retransmits the signals without simultaneously communicating them to the public itself, § 87 VI UrhG.

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

The practical relevance is rather high. There is a huge correlation between copyright infringement and broadcasters' rights although broadcasters' rights should not be relied upon exclusively.

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

Our content is available without any technical restrictions. Therefore the jurisdiction on framing/embedding has legalised a lot of business models.

Nevertheless illegal retransmission and upload of content stemming from public service media (PSM) and commercial broadcasters on digital platforms such as YouTube/Google, Vimeo is still a problem – especially if the context provokes a violation of personal rights.

In the case of stream ripping, content which is made available on online portals is extracted from the respective portals and stored as a permanent copy on the user's end device. In this framework, end users regularly make private copies, which are generally lawful under Section 53 (1) UrhG (Urheberrechtsgesetz, German Copyright Code). An exception applies in particular if an obviously unlawfully produced or publicly made available original is used for this purpose, Section 53 (1) sentence 1 UrhG. The effects of the DSM are still to be seen.

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

Selected content is published on UGC-platforms to target our audience and fulfil our PSM remit.

Furthermore PSM increasingly publish parts of their programmes under Creative Commons licences in order to enable UGC content.

ARD, for example, has been using Creative Commons licenses for several years to make selected content from educational, information and individual news programmes available for further use.

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

There is no information available.

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

The owner of the neighbouring rights under Section 87 UrhG is the legal entity of the broadcasting organisation that has carried out the broadcast within the meaning of Section 20 UrhG, which is intended for reception by the public (Cologne Upper District Court, judgment of 20 April 2018 - 6 U 116/17 - TV Pannenshow). A third party already interferes with the broadcasting right if parts of a broadcast are taken over. The broadcasting of parts of an interview previously broadcast by another

* Questions 6. – 11. under Section III were responded to by ARD (German Public Broadcaster).

broadcasting organisation constitutes an infringement of the rights of the first broadcasting organisation to record its broadcasts and to broadcast them later (Sections 87 (1) No. 2, 96 (1) UrhG). (Federal Court of Justice, Judgment of 17 December 2015 - I ZR 69/14 - Exclusive Interview)⁶. What is the relevance of copyright infringement in relation to broadcasters' rights?

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

Broadcasters provide for retransmission rights to operators either through collecting societies (in the case of the PSM ARD and ZDF it's VFF, in the case of the commercial broadcasters of the Pro7Sat1 group it's Corint Media - formerly VG Media) or directly (applies to RTL).

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

Audiovisual producers are entitled to moral rights protection against any distortion or abridging of the video recording or combined video and audio recording which is capable of prejudicing his or her legitimate interests therein (§ 94 I 2 UrhG).

Audiovisual producers have the exclusive right to reproduce, distribute (including rental) and use for public performance, broadcasting or making available to the public the visual or audiovisual carrier on which the audiovisual work is recorded (§ 94 I 1 UrhG). In addition, according to § 94 IV UrhG they also enjoy the right to retransmission (§ 20b UrhG) as well as a remuneration claim for public lending (§ 27 II and III UrhG).

13. What is the nature of those rights?

The rights mentioned rights are statutory rights.

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

The rights of audiovisual producers are exclusive rights. However, the producer is entitled to remuneration in the case of lending (§ 27 II, III UrhG), but not in the case of rental where the remuneration has to be negotiated in the licensing agreement with the person renting fixations of a protected broadcast.

15. Which exceptions/limitations generate remuneration rights for audiovisual producers?

As for performing artists and phonogram producers, § 94 IV UrhG refers to the general limitations of §§ 44a-61g UrhG. Hence the same exceptions/limitations apply as in the case of, e.g. performing artists, and audiovisual producers also are entitled to remuneration whenever the respective exception/limitation provides for such a remuneration.

16. Which rights are transferred to audiovisual producers? For how long?

In order to produce an audiovisual work (§ 2 I no. 6 UrhG) or a non-original moving picture (§ 95 UrhG), the audiovisual producer needs the rights of fixation/reproduction and, in addition all rights necessary

for the subsequent exploitation of the audiovisual production, i.e. the rights of distribution including rental, of broadcasting, of retransmission, of making the audiovisual work publicly available and perceivable. These rights are usually granted to the audiovisual producers by the respective individual rightholders and CMOs by way of contract.

17. Are there any legal presumptions of transfer towards audiovisual producers?

In order to facilitate the transfer of rights described in the answer to question 16 of this Panel III, the German Copyright Act contains certain legal presumptions. Thus, if authors allow audiovisual producers to adapt their work into a film, they are, in case of doubt, granted the exclusive right to use the work unchanged or adapted for the production of an audiovisual work and to use this work for all types of exploitation, except – unless otherwise provided – to re-film the work (§ 88 UrhG). However, authors are entitled to use their work for other audiovisual purposes after the expiry of 10 years from the conclusion of the contract (§ 88 II 2 UrhG).

Similar presumptions exist with regard to film authors (§ 89 UrhG) and to performers who participate in the production of a film work (§ 92 UrhG), which, in case of doubt, grant the audiovisual producer the right to use the performance in one of the ways reserved for the performer under § 77 I, II 1 UrhG and § 78 I no. 1, 2 UrhG.

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

Also, in the cases of legal presumptions in favor of audiovisual producers for the granting of rights of use, the general contractual rules apply, e.g. the right to equitable remuneration according to § 32 UrhG.

However, it should be noted that, like phonogram producers (see Panel II, answer to question 6) audiovisual producers do not enjoy the same contractual protection as authors and performing artists (§ 94 II 3 UrhG).

19. How is audiovisual producers' compensation determined for each business model?

Performer's compensation is to a large extent calculated according to the collective agreements concluded with the trade unions.³⁸

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

There are no statutory provisions in the UrhG as to any minimum amounts.

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

³⁸ See e.g. the collective agreements of the VGF (Verwertungsgesellschaft für Nutzungsrechte an Filmwerken mbH), <https://www.vgf.de/verteilung/verteilungsplan/>; GWFF (Gesellschaft zur Wahrnehmung von Film- und Fernsehrechten mbH), <https://www.gwff.de/verteilungsplaene.html>; VFF (Verwertungsgesellschaft der Film- und Fernsehproduzenten mbH), <https://www.vff.org/verteilungsplaene.html>.

See already above in connection with performers, Panel I, answer to question 18.

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

See already above in connection with phonogram producers, Panel II, answer to question 9.

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

According to studies mostly by rightholders, in 2022, global losses (lost revenues) from online piracy related to audiovisual content are expected to reach 51.6 billion US \$.³⁹ In Europe, losses to creative industries from digital piracy are estimated at 32 billion euros by 2015.⁴⁰ According to a 2018 study, television piracy causes an annual revenue loss of 700 million euros in Germany.⁴¹

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

The exploitation windows for audiovisual works are basically at the discretion of the film distributors. However, there are legal requirements for subsidised productions according to §§ 53 et seq. FFG (Filmförderungsgesetz).⁴²

25. Which CMOs represent audiovisual producers in your Country?

In Germany, several collecting societies are active in the field of audiovisual production, each one of them administering a particular group of film producers. The VGF (Verwertungsgesellschaft für Nutzungsrechte an Filmwerken mbH⁴³) primarily administers the rights of film producers. In addition, GWFF (Gesellschaft zur Wahrnehmung von Film- und Fernsehrechten mbH⁴⁴) is responsible in particular for administering the rights of foreign film producers. The VFF (Verwertungsgesellschaft der Film- und Fernsehproduzenten mbH⁴⁵) administers the rights of film and television producers. And the GÜFA (Gesellschaft zur Übernahme und Wahrnehmung von Filmaufführungsrechten mbH⁴⁶) is specifically responsible for the rights administration of film producers of pornographic films.

³⁹ Digital TV Research (30 October, 2017), Estimate of legal online sales of series/movies and losses due to online piracy worldwide from 2010 to 2022 (in billions of US dollars), accessed via <https://de.statista.com/statistik/daten/studie/777976/umfrage/legaler-umsatz-mit-video-streaming-und-verluste-durch-online-piraterie/> (accessed 10 June 2022).

⁴⁰ German Music Industry Association (29 April, 2010), Forecast: Losses of the creative industries due to digital piracy (in billion euros) in the EU-27 from 2008 to 2015, accessed via <https://de.statista.com/statistik/daten/studie/155957/umfrage/verluste-der-kreativwirtschaft-durch-digitale-piraterie-bis-2015/> (accessed 10 June 2022).

⁴¹ VAUNET, Goldmedia, Fernsehpiraterie-Studie 2018, 4, https://www.vau.net/system/files/documents/goldmedia-fernsehpiraterie-studie-2018_short.pdf (accessed 10 June 2022).

⁴² German Film Subsidies Act (German original text available at https://www.gesetze-im-internet.de/ffg_2017/index.html).

⁴³ <https://www.vgf.de>.

⁴⁴ <https://www.gwff.de>.

⁴⁵ <https://www.vff.org/startseite.html>.

⁴⁶ <https://222.guefa.de/>.

26. Do these CMOs comply with transparency principles?

See already above, Panel I, answer to question 22 regarding performing artists.

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

The income generated from the individual rights must be disclosed in the transparency reports of the CMOs (§ 58 II UrhG and Annex). The transparency reports of the different CMOs can be found on their respective websites.

28. What is the current litigation level for audiovisual producers' rights in your country?

See already above, Panel I, answer to question 24 with regard to performing artists.

29. Are there any relevant Court Decisions concerning audiovisual producers' rights?

In 2018 the BGH has ruled that also film fragments are subject to the neighbouring rights of film producers.⁴⁷

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

Due to the difficulties of acquiring rights for retransmission services, § 20b UrhG provides for an obligation to have the rights administered by a CMO (see already Panel I, answer to question 4). The rights of broadcasting organisations are exempt from this obligation. However, there is a duty to negotiate in good faith (§ 87 V UrhG; see already Panel III, answer to question 5).

⁴⁷ BGH, 06.12.2017, I ZR 186/16, <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&nr=80965&pos=0&anz=1>.

Panel IV – Database producers’ and publishers’ rights

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

In Germany, databases are protected by copyright as database works if the elements of a collection which are individually accessible by electronic or other means are arranged systematically or methodically, and if they are personal intellectual creations based on the choice or arrangement of the elements (§ 4 II, I UrhG).

Moreover, transposing Art. 7 I of Directive 96/9/EC (Database-Directive), §§ 87a–87e UrhG grant database producers sui generis-protection regardless of whether they can possibly also claim copyright protection according to § 2 UrhG.

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

See already Panel IV, answer to question 1.

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

A first evaluation report⁴⁸ on the Database Directive was published in 2005 and was negative. In the course of a further consultation process, a study⁴⁹ was conducted and subsequently another evaluation report⁵⁰ was published in 2018. In this report, the Directive was found to have added value, but could nevertheless be revised.

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

A distinction must be made between Database protection and data protection: Whereas database protection applies to the aggregation of data, individual data are subject to their individual regime (e.g., copyright for copyrighted works as elements of a database; data protection laws for personal data contained in a data base etc.). However, no ownership exists or shall be introduced for data as such.

But it should be noted that at the European level, questions in connection with data protection are currently being discussed within the European Strategy for Data and especially the Data Act.⁵¹ According to the proposal for a Data Act, sui generis rights should not accrue to data covered by the Data Act, i.e. to rights generated by the use of digital devices.

⁴⁸ First evaluation of Directive 96/9/EC on the legal protection of databases, https://ec.europa.eu/info/sites/default/files/evaluation_report_legal_protection_databases_december_2005_en.pdf (accessed 10 June 2022).

⁴⁹ Study in Support of the Evaluation of the Database Directive, <https://digital-strategy.ec.europa.eu/en/library/study-support-evaluation-database-directive> (accessed 10 June 2022).

⁵⁰ Commission Staff Working Document: Evaluation of Directive 96/9/EC on the legal protection of databases, <https://digital-strategy.ec.europa.eu/en/library/staff-working-document-and-executive-summary-evaluation-directive-969ec-legal-protection-databases> (accessed 10 June 2022).

⁵¹ Proposal for a EU Data Act, <https://ec.europa.eu/newsroom/dae/redirection/document/83521>; for the European Data Strategy, see https://ec.europa.eu/info/strategy/priorities-2019-2024/europe-fit-digital-age/european-data-strategy_en (accessed 10 June 2022).

5. How does it work? Is it effective?

As already mentioned in question 4., there is no ownership of data in general under current German law nor do current plans at the European level plan to introduce such data ownership.

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

According to Art. 13 of the Database Directive, protection under competition law and further laws remains unaffected alongside database protection.

As regards legislation on freedom of information, no entitlement to access to information shall apply where such access compromises the protection of intellectual property (§ 6 Informationsfreiheitsgesetz, IFG).⁵² Similar provisions can be found in the specialised laws on freedom of information concerning environmental and consumer protection information.

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

According to § 95a UrhG, there is a protection of copyright and neighbouring rights holders against the circumvention of TPM. However, according to § 95b UrhG, rights holders are obliged to tolerate circumvention in order to make use of certain exceptions (for example regarding text- and data mining, scientific research, etc.).

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

According to § 87g I UrhG, press publishers have the exclusive right to make their press publications available to the public in whole or in part for online use by providers of information society services and to reproduce them.

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

The German legal protection for press publishers, which is based on Art. 15 of the DSM-Directive (EU) 2019/790, does not apply to periodicals which are published for scientific or academic purposes (§ 87f I 2 UrhG).

Moreover, the exclusive rights of press publishers do not include the setting of hyperlinks to a press publication (§ 87g II no. 3 UrhG).

⁵² An English translation of the IFG is available at https://www.gesetze-im-internet.de/englisch_ifg/englisch_ifg.html#p0048. – For a case on the scope of copyright in governmental information and the exceptions of citation (§ 51 UrhG) and of reporting on current events (§ 50 UrhG) see BGH, case I ZR 139/15 of 30. April 2020 – *Afghanistan Papiere II*, <http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=ccaf9dd7eb4c0188b27023b8934600c6&nr=107377&pos=0&anz=2>.