ALAI Questionnaire

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Answers to Questions I and II for Germany by

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I. INITIAL OWNERSHIP [SESSION 2]

A. To whom does your country's law vest initial ownership? (Please indicate all that apply.)

1 — The author (human creator) of the work

a. Does your country's law define who is an author?

Under German law (Act on Copyright and Related Rights; Urheberrechtsgesetz, in short: UrhG), the author is defined as "the creator of the work" (Sec. 7 UrhG). Authorship is thus intrinsically linked to the creation of a work. A "work" within the meaning of the UrhG must constitute a personal intellectual creation pursuant to Sec. 2(2) UrhG. Consequently, a person qualifies as an author under Sec. 7 UrhG only if they personally perform such a creative act.

b. For joint works (works on which more than one creator has collaborated), does your law define joint authorship? What is the scope of each co-author's ownership? (may joint authors exploit separately, or only under common accord)?

German law defines joint authorship in Sec. 8(1) UrhG: Where several persons have jointly created a work without it being possible to separately exploit their individual shares in the work, they are joint authors of the work. According to Sec. 8(2) UrhG, joint authors may only exploit the work with mutual consent, unless otherwise agreed. This means that individual co-authors cannot unilaterally exercise exploitation rights; decisions require unanimity among all joint authors. Pursuant to Sec. 8(3) UrhG, proceeds derived from the use of the work are due to the joint authors in accordance with the extent of their involvement in the creation of the work, unless agreed otherwise. Indeed, joint authors may waive their share of the exploitation rights in accordance with Sec. 8 (4) UrhG.

2 — Employers

a. Under what conditions, e.g., formal employment agreement, in writing and signed? Creation of the work within the scope of employment?

The employee remains the author of the works created by her. Pursuant to Sec. 29 (1) UrhG, the copyright itself cannot be transferred. Employers may only acquire derived rights of use to the extent necessary, typically based on the purpose of the employment contract.

3 — Commissioning parties

a. All commissioned works, or limited to certain categories?

b. Under what conditions, e.g., commissioning agreement, in writing and signed by both parties?

The copyright always remains with the creator of the work, even in the case of commissioned work. The client may only be granted (possibly exclusive) rights of use. For further information, see under 2.

4 — The person or entity who takes the initiative of the work's creation (e.g. Producers; publishers) of certain kinds of works, e.g., audiovisual works; collective works

a. scope of ownership of, e.g. all rights, or rights only as to certain exploitations; what rights do contributors to such works retain?

German law generally follows the principle of personal authorship (Sec. 7 UrhG), meaning that only natural persons who have contributed creatively to the work are considered authors. However, the law also provides for related rights, which are primarily based on economic and organizational input rather than creative authorship. These include, in particular, the rights of producers of sound recordings, broadcasting organizations, makers of databases, press publishers, and film producers. But even for these related rights, ownership does not necessarily depend on who took the initiative, but rather on who carried out or financed the protected activity.

5 — Other instances of initial ownership vested in a person or entity other than the actual human creator? (Other than 6, below.)

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6 — If your country's law recognizes copyright in AI-generated works, who is vested with original ownership? (e.g., the person providing the prompts to request an output? The creator of the LLM model and/or training data? someone else?)

[b. For presumptions of transfers, see II (transfers of ownership, below)]

German law does not recognize copyright in AI-generated works that lack human authorship. As per Sec. 7 UrhG, only a natural person who creates a work through personal intellectual effort (Sec. 2(2) UrhG) can be considered an author. Consequently, fully autonomously generated AI outputs are not eligible for copyright protection under current German law.

If a human meaningfully contributes to the creation – e.g., by making creative choices in prompting or editing – the result may be protected, but only insofar as it reflects human authorship. The creator of the AI model or training data is not considered the author unless they contribute creatively to the specific work.

B. Private international law consequences

1 — To what country's law do your country's courts (or legislature) look to determine initial ownership: Country of origin? Country with the greatest connections to the work and the author(s)? Country(ies) for which protection is claimed?

According to case law and the prevailing – though not undisputed – view in legal literature, copyright matters, including the determination of initial ownership, are governed by the lex loci protectionis, that is, the law of the country for which protection is claimed according to Art. 8(1) Rome II Regulation.

II. TRANSFERS OF OWNERSHIP [SESSION 3]

A. Inalienability

1 — Moral rights

a. Can these be granted to the grantee of economic rights? To a society for the collective management of authors' rights?

Under German law, the copyright itself, including moral rights, is not transferable (Sec. 29(1) UrhG). An exception to this is the provision that the copyright is inheritable (Sec. 28 (1) UrhG). However, authors can authorize third parties to exercise certain aspects of their moral rights.

b. May the author contractually waive moral rights?

Because moral rights are part of the inalienable copyright under German law (Sec. 29(1) UrhG), they cannot be waived. However, it is possible to waive the exercise of certain aspects of moral rights (e.g. copyright designation) as long as the core of the moral right is not affected.

2 — Economic rights

a. May economic rights be assigned (as opposed to licensed)? May an author contractually waive economic rights?

Under German law, the copyright itself, including economic rights, is not transferable (Sec. 29(1) UrhG). Furthermore, a waiver of the economic rights is not permitted. Accordingly, statutory remuneration claims may also not be waived in advance, pursuant to Sec. 63a UrhG. A special case is governed by Sec. 8(4) UrhG, according to which joint authors can waive their share of the exploitation rights. However, authors remain free to grant non-exclusive rights of use free of charge to anyone (see Secs. 31a(1) 2, 32a(3) 3, and 32c(3) 2 UrhG).

b. Limitations on transfers of particular economic rights, e.g., new forms of exploitation unknown at the time of the conclusion of the contract.

According to Sec. 31a UrhG, an author cannot validly grant rights to types of use that were unknown at the time the contract was concluded, unless the grant is made in writing. Even then, the author retains the right to claim separate and equitable remuneration once the new type of use is actually exercised (Sec. 32c UrhG).

B. Transfers by operation of law

1 — Presumptions of transfer:

a. to what categories of works do these presumptions apply?

b. are they rebuttable? What must be shown to prove that the presumption applies (or has been rebutted)?

c. Scope of the transfer: all rights? Rights only as to certain forms of exploitation?

d. Conditions for application of the presumption (e.g. a written audiovisual work production contract; provision for fair remuneration for the rights transferred)?

According to Sec. 38 (1) UrhG, where the author permits the inclusion of the work in a collection which is published periodically, in cases of doubt, the publisher or editor acquires an exclusive right of reproduction, distribution and making available to the public. However, the author may otherwise reproduce, distribute and make available to the public the work upon expiry of one year, unless otherwise agreed. From that point onward, the publisher retains only a non-exclusive right of use.

Furthermore, if an employee creates a computer program in the execution of her duties or following the instructions of her employer, the employer alone is entitled to exercise all economic rights in the computer program, unless otherwise agreed (Sec. 69b(1) UrhG). These exclusive rights are unlimited in time and territory.

Sec. 89(1) UrhG provides a further presumption that the producer of a film acquires the exclusive right to use the cinematographic work, as well as translations and other cinematographic adaptations or transformations of the cinematographic work in all manner of uses from the contributors, unless otherwise agreed. These rights are likewise unlimited in time and territory.

Additionally, Secs. 48 and 49 of the Act on the Management of Copyright and Related Rights by Collecting Societies (Verwertungsgesellschaftengesetz, VGG) establish a legal presumption in favor of collecting societies. Where certain remuneration claims or information rights may only be asserted by such societies, they are presumed to act on behalf of all entitled rightsholders.

2 — Other transfers by operation of law?

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C. Transfers by contractual agreement

1 — Prerequisites imposed by copyright law to the validity of the transfer, e.g., writing, signed, witnessed, recordation of transfer of title?

The granting of rights of use generally does not require a specific form under German law. Exceptions exist for contracts concerning unknown types of use (Sec. 31a(1) UrhG) and for certain contracts relating to future works (Sec. 40 UrhG). For the transfer of publishing rights as rights of use in rem, Sec. 9(1) of the German Publishing Act (Verlagsgesetz) requires delivery of the manuscript, unless agreed otherwise.

2 — Do these formal requirements include an obligation to specify what rights are transferred and the scope of the transfer?

The types of use do not have to be explicitly specified. In case of doubt, however, the scope of the granted rights is limited in accordance with Sec. 31(5) UrhG, based on the purpose of the contract as mutually agreed by the parties, in order to protect the author. This applies in particular to whether a right of use has been granted at all, whether it is exclusive or non-exclusive, the extent of the right and the corresponding right to prohibit use, and any

limitations attached to it. In practice, this principle leads to contracts typically including a detailed catalogue of individual rights of use.

3 — Does your country's law permit the transfer of all economic rights by means of a general contractual clause?

A blanket grant of rights (e.g., "for all types of use") triggers the application of Sec. 31(5) UrhG. The scope of the granted rights of use is therefore determined by the purpose of the contract as mutually agreed by the parties. Thus, a comprehensive transfer of all economic rights through a general contractual clause is not legally possible under German copyright law.

4 — Does your country's law permit the assignment of all rights in future works?

An obligation to grant rights of use in future works is generally permissible under German law. However, according to Sec. 40 UrhG, a contract in which the author undertakes to grant rights of use in future works which are not specified in any way or are only referred to by type must be made in writing. If the future works are already individualized – for example, by title, outline, sketch, or description – the author may also validly undertake such an obligation without any formal requirements.

D. Private international law

1 — Which law does your country apply to determine the alienability of moral or economic rights and other conditions (e.g. the country of the work's origin? The country with the greatest connections to the work and the author(s)? The country(ies) for which protection is claimed?)

Under German law, the prevailing – though not undisputed – view is that the law of the country for which protection is claimed (lex loci protectionis) governs the alienability of both moral and economic rights, as well as other substantive copyright matters. It is disputed, however, whether this results from Art. 8(1) and Art. 15(a) and (f) of the Rome II Regulation or from national conflict-of-law rules.