Public Domain Calculator
Report and Documentation

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Authors:
Christina Angelopoulos and Catherine Jasserand
Institute for Information Law, University of Amsterdam

Questionnaires submitted by National Experts

www.outofcopyright.eu
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Introduction

As part of EuropeanaConnect Work Package 4 and in collaboration with Nederland Kennisland (KL), the Institute for Information Law (IViR) of the University of Amsterdam has prepared a set of Public Domain Calculators. The Calculators are intended to assist users in the determination of whether or not a certain work or other subject matter vested with copyright or neighbouring rights (related rights) has fallen into the public domain and can therefore be freely copied or re-used, through functioning as a simple interface between the user and the often complex set of national rules governing the term of protection. The issue is of significance for Europeana, as the data provider agreements contain provisions that oblige the partners/providers to mark, whenever possible, the contents of their collection as public domain material, through the attachment of a CC Public Domain Mark.

There are currently thirty Public Domain Calculators, each one covering the copyright and neighbouring rights term of protection regime in a separate European jurisdiction. The countries thus covered are the following: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland and the United Kingdom. The selection of countries was intended to cover all states belonging to the European Free Trade Association (with the exception of the very small Liechtenstein).

The work process followed in the preparation of the Calculators was as follows: (a) first a Questionnaire on the Term of Protection was completed by National Experts selected by IViR and representing each of the examined states; (b) subsequently the answers to the Questionnaire were reworked into National Flowcharts by IViR, one flowchart corresponding to each jurisdiction covered. Each flowchart was accompanied by a list of Information Boxes providing additional information intended to assist the user in the correct interpretation of the questions, where necessary; (c) finally, the Flowcharts and Information Boxes were translated into code by IViR's colleagues at Kennisland and uploaded in the form of Button-Based Calculators to a website created for that purpose. The website in question can be found at www.outofcopyright.eu.

It should be noted from the onset that there is a limit to the extent to which an electronic Calculator can replace a case-by-case assessment of the public domain status of a copyrighted work or other protected subject matter in complicated legal situations. Obscure issues and rare complications can surface; the Calculators are accordingly accompanied by a disclaimer to that effect, urging the user to contact a legal professional for reasonable legal certainty as to the duration of the protection of a specific information product incorporating copyright and/or related rights protected subject matter.

27 of the selected European countries are EU Member States; careful study of EU Directive 2006/116/EC on the term of protection of copyright and certain related rights (hereafter: Term Directive), which attempts the harmonisation of rules across the board of EU Member States (and states party to the Agreement on the European Economic Area) on the term of protection of copyright and neighbouring rights, was thus required.

The term of protection was one of the first issues in the area of copyright and related rights to be harmonised at the European level. The initial Term Directive was adopted in 1993, while a subsequent amendment in 2001 lead to the adoption of a consolidated version in 2006. The Directive is “horizontal” in that it sets the term of protection for all copyright and related rights subject matter recognised by the European acquis and is intended, through the imposition of both maximum and minimum harmonisation, to leave no room for national deviations from the European norm. The general term of protection rule imposed by the Term Directive for works of copyright is 70 years after the death of the author (“70 years post mortem auctoris or p.m.a”). Further provisions govern situations where the death of the author is impossible to ascertain or where the work doesn’t have a single identifiable human author. So, for example, works of joint authorship are protected for a period of 70 years after the last of joint authors to survive. Anonymous or pseudonymous works are granted a term of protection of 70 years after the work is lawfully made available to the public, unless the pseudonym adopted by the author leaves no doubt as to his/her identity. If the author discloses his/her identity while the work is still receiving protection, the term reverts to the default rule of 70 years p.m.a.

The term of protection for works whose right-holder is a legal person, as well as for collective works is also 70 years after the work is made available to the public. Finally, if the term of protection is not calculated from the death of the author(s) and the work is not lawfully made available to the public within 70 years from its creation, protection expires. The term of protection of related rights under the Directive is 50 years after the triggering event that sets the time running.

Nevertheless, the desired harmonising effect has not been entirely achieved. This has been mainly due either to exceptions permitted by the Directive itself, such as those on critical and scientific publications or non-original photographs, or to the fact that the substantive law terminology that underlies the rules on the duration of protection remains undefined on the European and international level. As a result, the way with which the rules prescribed by the Directive were incorporated into the pre-existing bodies of national legislation has differed from state to state. A single rule may be applicable across the EU in theory, but will result in drastically divergent terms of protection for the same information product depending on the jurisdiction within which protection is sought. It is
these national peculiarities that have necessitated separate flowcharts adjusted to the particular situation of each individual EU Member State, as opposed to one single overarching European flowchart. The construction of the Flowcharts highlighted the main stumbling blocks to the determination of the exact duration of protection that arise from the ambiguities which are inbuilt in the standing legal provisions. Below we will examine the precise instances in which the lack of harmonised substantive underpinnings for the Term Directive results in duration discrepancies or even actual uncertainties as to the precise term of protection of information products under certain circumstances across six European countries. The countries selected for this purpose are the Czech Republic, France, Italy, the Netherlands, Spain and the UK. The first section is dedicated to the analysis of concepts in copyright and related rights that remain unharmonised under the current European rules. The second section then progresses to exceptions from the main rules encountered in the Member States, whether explicitly permitted by the European legislator or not. Section 3 examines the protection afforded to foreign works under the Term Directive and the international obligations undertaken by the examined countries, while section 4 deals with the term of protection for databases. Finally, Section 5 looks at the transitional provisions introduced by the Term Directive to ease in the new – in most EU Member States extended – term of protection.

It should be noted that all terms of protection mentioned below should be taken as starting on the 1 January of the year following the event that set the term running.

1. Unharmonised Areas in European Copyright Law

A number of fundamental concepts of substantive copyright law integral to the interpretation of the rules on the term of protection remain undefined or loosely defined at the European level. As a result, the subject matter of protection and the conditions for that protection will be different depending of the individual rules of the country in which protection is sought. Below the definitions of the concepts of originality, works of joint authorship and collective works, as well as the rules established in the Directive and in national law for official documents, corporate authorship, previously unpublished public domain works and moral rights are analysed.

1.1. Originality

A central, if somewhat elusive, concept in copyright law is that of originality. The requirement of originality is encountered in all European jurisdictions, although it may not always be explicitly referred to in the law. It is generally accepted that the notion of originality is implicit to the concept of copyright within the construct of the Berne Convention, which repeatedly refers to the protection offered to “original works”, although abstaining from offering further guidance as to what the term entails. On the European level, until the recent Infopaq case, it was widely assumed among scholars that the notion of originality, if increasingly convergent within Europe, was nevertheless unharmonised.

A first attempt at reconciling Europe’s divergent legal traditions with regard to originality was made through the three similar originality standards devised by the European legislator for computer programmes, databases and original photographs. The Computer Programmes Directive demands that a computer programme be “original in the sense that it is the author’s intellectual creation” in order that protection might be recognised. The Database Directive uses the exact same wording. As a result, databases and computer programmes are generally accepted to be subject to the same standard of protection. The Term Directive repeats this standard in Article 6 in relation to photographs, although it also clarifies in Recital 16 that such an own intellectual creation must also reflect the author’s personality. Thus, the European Directives have imposed a vertical harmonisation of the concept of originality at least for these three types of works. Over time, it has been noted that a certain “rapprochement” between the copyright and author’s rights countries’ approach to originality can be observed in the assessment of the protection of other copyright works as well, at least in practical outcome if not in the conceptual tools employed to achieve it.

In 2009 the ECJ aspired to give greater impetus to this process of convergence. In the Infopaq case the Court held that the need for a uniform application of Community law and the principle of equality require that, where no express reference to the law of the Member States is made, the provisions of Community law must receive an identical interpretation throughout the Community. It accordingly ruled that copyright in the European legal order is liable to apply only in relation to subject matter which is original in the sense that it is the author’s own intellectual creation. It should be noted that this definition is quite vague and will require further elaboration by national courts in order to be applied in practice. This however is fully in keeping with the history of a dynamic term whose

1 See entry on “original work” in M. Ficsor, Guide to the Copyright and Related Rights Treaties Administered by WIPO and Glossary of Copyright and Related Rights Terms (WIPO, Geneva 2003) 300.
interpretation has not only been inconsistent across countries, but has also shifted through time within the case-law of each individual Member State. The significance of the divergent originality standards further diminishes when one considers the additional related rights protection offered by many Member States expressly for unoriginal material, such as unoriginal photographs or typographical arrangements. Thus, it may be concluded that, although both national variations in and internal domestic disagreements on the interpretation of the originality test will probably continue to arise, such divergences are likely to be slight and will not, in themselves, cause significant trouble for the internal market.

1.2. Works with Multiple Contributors

As mentioned above, the Term Directive contains separate provisions on the term of protection of works of joint authorship and collective works: for the former, copyright expires 70 years after the death of the last surviving of the joint co-authors (Article1(2)), whereas for the latter 70 years after the date of publication of the work (Article1(4)). The substantive law provisions defining what constitutes a work of joint authorship and a collective work have however not been harmonised on the European level; it is therefore up to the national laws and courts to decide when a work will be a work of joint authorship, when a collective work, when two or more separate works by different authors and when a national provision, unforeseen by the Term Directive, introducing an additional category of works involving multiple creators/contributors applies. The result is diverging terms of protection for the same copyright work depending on its classification in the national jurisdiction within which protection is sought.

1.2.1. Works of Joint Authorship

How are these rules reflected in the national legislation of the six selected Member States and what divergences occur between them? All six states define joint authorship according to some variation of the simple formula of “collaboration + inseparability”. The point of divergence occurs on the precise interpretation that is given to the notion of inseparability: factual inseparability, economic inseparability or intellectual inseparability. Where a work is considered to be a work of joint authorship the term of protection will be 70 years after the death of the last surviving from among the joint authors. Alternatively, the same work in another jurisdiction, which applies a different test to determine the existence of joint authorship, might be found to consist of two or more works, each with their own author and each with their own individual term of 70 years after his/her death.

In four of the examined jurisdictions the concept of inseparability has a factual denotation. According to Article 10 of the Italian Copyright Law, “if a work has been created by the indistinguishable and inseparable contributions of two or more persons, the copyright shall belong to all the joint authors in common.” Similar definitions are given by Article 7 of the Spanish Intellectual Property Law and Article 10 of the UK’s CDPA. In the Netherlands, although no explicit definition of works of joint authorship is provided by the Dutch Auteurswet, the case law of the Hoge Raad (Dutch High Court) has gone in the same direction. Under this approach, a work will be considered to be a work of joint authorship where no one author is able to single out a distinct substantial part of the work as being solely the fruit of his or her own creative exertions with no input from other contributors.

The French and Czech lawmakers break this mould. Article 10(2) of the Czech Copyright Law defines a work of joint authorship as a work which have been produced until the time of its completion as a single work by the creative activity of two or more authors and where the individual contributions of the individual authors are (regardless of whether or not they can be distinguished from each other) not capable of being used independently. In the Czech example we therefore see that economic rather than factual indivisibility becomes the relevant criterion. A work will still qualify as a work of joint authorship if the components comprising it are separable, but are not suited for independent exploitation. The article goes on to stipulate that the individual contributions of the joint authors cannot take the form of mere assistance or advice of a technical, administrative or expert nature or the provision of documentation or technical material or of the impulse to generate the work.

The French Code de la propriété intellectuelle goes one step further; according to Article L113-2, a work of joint authorship (oeuvre de collaboration) should simply be understood as “a work in the creation of which more than one natural person has participated.” What is necessary for the application of the provision is that the work be the product of concerted creative effort, a community of inspiration and mutual control. A hierarchy in the collaboration or a division of tasks is not incompatible with the concept of joint authorship under French law; even corrective work can thus qualify its author for equal joint authorship rights, as long as it is not of a mere accessorial nature. More importantly however, as opposed to the rules of the five jurisdictions described above, the factual or economic divisibility of the contributions is not significant — it is the intellectual indivisibility that results in a work of joint authorship. In fact, Article L113-3 expressly allows joint authors, where the contribution of each is of a different kind, to separately exploit their own personal contribution to the work of joint authorship, provided this does not prejudice the exploitation of the whole work. The provision thus presumes that cases will arise where the contributions to a work of joint authorship are both factually clearly identifiable

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7 Wet van 23 september 1912, houdende nieuwe regeling van het auteursrecht, Official Journal 308.
and economically individually exploitable. Works of joint authorship under French law do not presuppose that all different components be created in common by all co-authors.9

In all of the examined jurisdictions the term of protection of works of joint authorship, whatever their definition, was indeed explicitly given as 70 years after the death of the last surviving co-author, in perfect line with the Term Directive.10

What stands out from the above analysis is that, although all six countries under examination incorporate a definition of joint authorship in their legislation and although these definitions might appear to be only slightly dissimilar, they may nonetheless result in drastically divergent terms of protection where a single work manages to cross the line set by one country for the qualification for the unified term of protection for works of joint authorship, but in another is separated into multiple works, each with its own term of protection, commencing with its own author’s date of death.

A good example of the complexities which can arise in the area of joint authorship is provided by co-written musical works. Depending on the jurisdiction, a co-written musical work may either be classified as a single work of joint authorship or as multiple (separate) works. A detailed analysis of the different models for joint authorship that apply has already been given by the Institute for Information Law in Harmonizing European Copyright Law,11 but in brief the situation is as follows:

- In France, a co-written musical work is traditionally understood to be a work of joint authorship (œuvre de collaboration) on the basis of the concerted creative collaboration towards a common goal or following a common plan that will have led to its production; The term of protection will be unitary for the entire ensemble of music and lyrics and will be calculated on the basis of the death of the longest-living author; Spain follows France’s lead: co-written musical works are considered to be works of joint authorship, with the term of protection likewise triggered from the death of the last author to survive;
- In the Netherlands and the UK, by contrast, a co-written musical work will be understood as being a combination of multiple separate works, each attracting its own individual term of protection due to the simple factual divisibility between the elements (music and lyrics) that comprise it. The Czech Republic follows a similar model, the only difference being that the divisibility of the work's parts will be established not on factual, but on economic grounds (i.e. the extent to which they are suited for independent exploitation);
- In Italy, most co-written musical works will be understood as being separate creations attracting their own individual term of protection. The only exception is introduced by express legislative intervention: according to Article 26 of the Italian Copyright Law, dramatico-musical works, alongside works of dumb show and choreographic works, although not in fact understood as constituting works of joint authorship are nevertheless exceptionally granted a term of protection starting from the death of the last contributing author to survive.

Auteurswet, Article 7(1) of the Dutch Auteurswet, Article 27(2) of the Czech Copyright Law, Article L 123-2 of the French Code de la propriété intellectuelle, Article 26 of the Italian Copyright Law, Article 37(2) of the Dutch Auteurswet, Article 7(1) of the Spanish Intellectual Property Law, s.12(8) CDPA.

Mindful of these conflicting regimes and of the practical difficulties and legal uncertainties in which they result, the European Commission proposed in 2008 the introduction of a rule for the calculated of the term of protection of co-written musical works that copies the rule currently in place under Article 2 of the Term Directive for cinematographic and audiovisual works.12 The goal is to sidestep the drama of disparate joint authorship models and simply attach the term of protection to the death of the last from among a standard pre-designated set of persons. However, the judiciousness of such a move is questionable. Not only are co-written musical works not the only authored products which suffer from the term of protection consequences of uneven harmonisation, but, as we shall see below, the lack of a unified concept of works of joint

10 Article 27(2) of the Czech Copyright Law, Article L 123-2 of the French Code de la propriété intellectuelle, Article 26 of the Italian Copyright Law, Article 37(2) of the Dutch Auteurswet, Article 7(1) of the Spanish Intellectual Property Law, s.12(8) CDPA.

authorship is not the only significant unharmonised area that obstructs the establishment of identical terms of protection throughout the EU.

1.2.2. Collective Works

Article 1(3) of the Term Directive sets the term of protection of collective works at 70 years after the work is lawfully made available to the public. The recognition of the concept of collective works in the jurisdictions of the Member States is not obligatory under the Directive.

The term of protection of collective works under French law is 70 years after the publication of the work. Article L113-2 of the French Intellectual Property Code defines an oeuvre collective as “a work created at the initiative of a natural or legal person who edits it, publishes it and discloses it under his direction and name and in which the personal contributions of the various authors who participated in its production are merged in the overall work for which they were conceived, without it being possible to attribute to each author a separate right in the work as created.” Thus, as opposed to the notion of joint authorship, collective works in France do not require that concerted effort and common execution be exerted by the contributors. Instead, the work must be created at the initiative and under the direction of an entrepreneur, be it a legal or natural person, who controls the creative process through the issue of instructions and harmonises the different contributions. As already explained above, the mere preeminent role of one of the contributors does not of itself necessarily disqualify a work from the category of joint authorship and delegate it to that of collective works; rather the decisive factor is the extent to which the contributors, other than the person who edits, publishes and discloses the work, have lost their creative independence, whatever the importance or merit of their contributions. Whether the contributors other than the work’s maître are identified or anonymous is indifferent. Having said this, the concept of oeuvre collective in France is highly complex and murky, giving rise to conflicting case law and scholarly opinions as to its precise application. It is at least unanimously agreed upon that the concept covers dictionaries, encyclopaedias and periodical works, such as newspapers or magazines.

The Czech, Spanish and Italian copyright laws follow suit, with slight variations. In the Czech Republic, a collective work is understood as a work that is created with the participation of more than one authors at the initiative and under the management of a natural person or of a legal entity and made available to the public under that person’s or entity’s name and where the individual contributions involved in the work are not capable of independent use. The term of protection is 70 years after the work was made available to the public.

Article 8 of the Spanish Intellectual Property Law defines a collective work as a work created on the initiative and under the direction of a person, whether natural person or legal entity, who edits it and publishes in under his/her name and which consists of the combination of contributions by various authors whose personal contributions are so integrated in the single, autonomous creation for which they have been made that it is not possible to ascribe to any one of them a separate right in the whole work. Article 28 grants collective works duration for 70 years following the lawful disclosure of the work.

Article 3 of the Italian Copyright Law defines collective works as works formed by “the assembling of works or parts of works possessing the character of a self-contained creation resulting from selection and coordination with a specific literary, scientific, didactic, religious, political or artistic aim, such as encyclopaedias, dictionaries, anthologies, magazines and newspapers”. The term of protection of the collective work as a whole is 70 years from publication. An exception is provided in the case of magazines, newspapers and other periodical works, where for the purposes of term calculation each individual part or issue is granted an independent term.

Dutch law drastically departs from the above model. In the Netherlands, Article 5 of the Dutch Auteurswet states that “if a literary, scientific or artistic work consists of separate works by two or more persons, the person under whose guidance and supervision the work as a whole has been made or, if there is no such person, the compiler of the various works, shall be deemed the author of the whole work, without prejudice to the copyright in each of the works separately” (verzamelwerk). Examples of verzamelwerken under Dutch law would include anthologies, encyclopaedias, edited collections of essays, cds featuring selections of works by diverse artists or even databases. No provision in the Dutch law deals expressly with the term of protection of collective works. Instead, we are left to assume that the default rule of 70 year p.m.a is applicable. The verzamelwerk and its components should be treated as independent works, each attracting its own individual term of protection. In the case of the works separately, this will be calculated from the death of the person under whose guidance and supervision the work as a whole has been made or the compiler, as appropriate, while in the case of the latter, the death of its individual author shall be the decisive date. The only situation in which the duration of protection of a collective work will be calculated from its date of publication under Dutch law will be that in which its author is a legal person (see below, Section 1.2.4.). The extent to which this arrangement can be viewed as compatible with the provisions of the Term

13 Article L123-3, Code de la propriété intellectuelle.
16 Article 27(4) Czech Copyright Law.
Directive will depend on the correspondence of the notion of verzamelwerken with that of collective works in the meaning of the Term Directive. If a verzamelwerk is not considered to be the Dutch equivalent of a collective work, no incompatibility occurs.

In the UK, s. 178 of the CDPA defines a collective work very broadly as either "(a) a work of joint authorship or a work in which there are distinct contributions by different authors or in which works, or (b) parts of works of different authors are incorporated." Given however that no provision in the CDPA establishes an exception to the default rule of 70 years p.m.a. for collective works, the definition is entirely irrelevant to the term of protection of works that fall within its ambit.

Article 1(4) of the Term Directive exempts the situation where "the natural persons who have created the [collective] work are identified as such in the versions of the works which are made available to the public" from term calculation on the basis of the date of publication. In such cases, the joint authorship rule kicks in and duration reverts to the rule of 70 years after the death of the last surviving from among the co-authors in accordance with Article 1(2) Term Directive. From among the six selected Member States, only Spain has expressly implemented this arrangement. While Article L113-5 of the French CPI does provide for a possibility to prove that the author of a collective work is somebody other than that person under whose name it was disclosed, it does not foresee any change in the calculation of the term of protection in such cases. In countries such as the Czech Republic, where being made available under the compiler's name is part of the definition of a collective work, or the Netherlands and the UK, where the concept of collective works in the meaning of the Term Directive does not exist, the issue obviously does not arise.

Article 1(4) Term Directive also stipulates that the duration of the protection of a collective work as a whole is not intended to prejudice the rights of identified authors whose indefinable contributions are included in the collective work; instead, the term of protection of the collective work as a whole is 70 years after it has been made available to the public, while the term of protection of each individual contribution is 70 years after the death of (the last surviving co-)author. This rule has been explicitly incorporated in Spanish and Italian legislation. In the absence of any provision to the contrary, we can assume that, where the individual contribution merits copyright protection as an original work of authorship, the same applies in France and the Czech Republic, as well as in the Netherlands in relation to verzamelwerken.

In conclusion, we observe that, as with works of joint authorship, with collective works as well the lack of a unified understanding of the precise content of the legal terms used in the Term Directive can lead to a fragmentation of what was intended to be a unified European term of protection regime. France, Italy, Spain and the Czech Republic have relatively similar notions of collective works and attach their term of protection to the date of publication of the work, although Spain foresees a reversion to the default rule of 70 years after the death of the (last surviving co-)author should the natural persons who created the work be indentified as its authors in the versions of the work which are made available to the public. In the Netherlands, the notion of a verzamelwerk is arguably close to that of a collective work, but the term of protection is detached from the date of publication of the work and affixed to the death of the supervisor/compiler instead. In the UK the qualification of a work as a collective one is entirely decoupled from the term of protection – term of protection is instead always attached to the date of death of the author.

Thus, for example, a bundle of academic essays published under the name of a single editor will attract the following terms of protection depending on the country within which protection is claimed:

1. In France, Italy and Spain, subject to jurisprudential interpretation, the bundle is likely to qualify as collective work and will accordingly be granted 70 years of protection after the date of publication. The biggest exception to this rule being if the collection is published in Spain under the names of all contributors; in this case, the term of protection will be till 70 years after the death of the last surviving from among them. If the individual essays included in the collection are found to be original enough to qualify for copyright protection, the term of each essay will be 70 years after the death of the essayist.

2. In the Netherlands and the UK, if the collection as a whole is found to be original enough to qualify for copyright protection, the term of protection will be 70 years after the death of the compiler. The same will be true of the individual essays included in the collection: if they are found to be original enough to qualify for copyright protection, the term of each essay will be 70 years after the death of the essayist.

3. In the Czech Republic, the bundle of essays will only qualify as a collective work if the contributions involved in the work are not capable of independent use. Instead, the bundle of academic essays will qualify as a work of collection. Accordingly, the term of protection scheme will likely be similar to that of the Netherlands and the

19 Article 28 of the Spanish Intellectual Property Law.
20 Article 26 of the Italian Intellectual Property Law.
21 Berne Convention, Art. 2(5).
UK: if the collection as a whole passes the originality test and an independent work, its protection will last till 70 years after the death of the editor/compiler. The individual essays may also attract independent protection, enduring till 70 years after the death of their respective authors.  

1.2.3. Audiovisual Works

In the case of cinematographic and audiovisual works the main obstacle to term harmonisation was the sheer number of creative contributors participating in their creation. Divergent approaches among the Member States in the rules on the authorship and first ownership of such works, as well as to the legal presumptions related to the right to exercise the economic rights on the part of all contributors exacerbated this problem. Article 2 of the Term Directive found a solution in the harmonisation of the term of protection of cinematographic or audiovisual works at 70 years after the death of the last of a fixed list of persons: the principle director, the author of the screenplay, the author of the dialogue and the composer of the music specifically created for use in the cinematographic or audiovisual work. If the screenplay or dialogue have more than one author or the music more than one composer, presumably the last of these to survive should be the one taken into account, in analogy to the rule of Article 1(2) of the Term Directive. From among the directors, only the principle director is relevant for the calculation of the term of protection; assisting directors will not be taken into account, irrespective of their right-holder status. The only obligate author under Article 2 is the principle director; whether the other listed contributors are designated as authors or not is immaterial to copyright duration. The provision can be seen as a compromise between continental European tendency to recognise the director as the main creator of a film and the UK tradition of viewing films as entrepreneurial works the authorship of which lies with the producer.

The provision is perhaps disingenuous to the extent that it connects the duration of the author’s rights and those his/her successors to the lifespan of persons who may not have any claims to authorship under national law. However, the rule successfully avoids overstepping the subsidiarity boundaries to the permitted scope of EU legislative action and a clashing of horns with national lawmakers on the determination of the author of cinematographic and audiovisual works. Instead it gives a straightforward answer to the question of duration by attaching it to the cinematographic or audiovisual work. If the screenplay or dialogue have more than one author or the music more than one composer, presumably the last of these to survive should be the one taken into account, irrespective of their right-holder status. The only obligate author under Article 2 is the principle director; whether the other listed contributors are designated as authors or not is immaterial to copyright duration. The provision can be seen as a compromise between continental European tendency to recognise the director as the main creator of a film and the UK tradition of viewing films as entrepreneurial works the authorship of which lies with the producer.

In other jurisdictions a legal person may hold copyright in a work, but with no direct effect on the term of protection. In France the person under at the initiative of whom a collective work is created and under the direction and name of whom it is edited, published and disclosed will almost always be a legal person. The provision is in fact of great significance to legal persons, as well as employers in general, as under French law it is only through the creation of a collective work that a legal person can be vested with an original title of ownership in a copyright work. The same will be true in the Czech Republic, Italy and Spain. As the term of protection required by the Directive for the protection of collective works coincides with that set out for the works of legal persons, no express provision setting out the term of protection of works whose author is deemed to be a legal person in the law of these Member States is necessary.

In the UK section 11 CDPA states that, where a literary, musical or artistic work is made by an employee in the course of his/her employment, the employer will be the first owner of the copyright in the work, subject to any agreement to the contrary. However, according to s. 9, authorship of the work will remain with the person who created it. Accordingly, given that the term of protection is calculated on the basis of the death of the author, as opposed to the first owner, the term of protection remains unaffected by the corporate nature of the work. Whether this provision is compatible with Article 1(4) of the Term Directive, which speaks of the term of protection for works for which a legal...

22 Czech Copyright Act, Art. 2(5) and 5(2).
25 Article L111-1, Code de la propriété intellectuelle.
person is the right-holder, and not the author, is open to examination.

1.2.5. Other Related Concepts: Collections, Compilations and Fictional Authorship

The concepts of joint authorship and collective works should not be confused with other configurations that might attract independent copyright protection which are not specified in the Term Directive. According to Article 2 of the Berne Convention, for example, derivative works, such as translations, adaptations, arrangements of music and other alterations of a literary or artistic work, must protected as original works without prejudice to the copyright in the original work. In addition, collections of literary or artistic works, such as encyclopaedias and anthologies, which, by reason of the selection and arrangement of their contents, constitute intellectual creations also constitute work of authorship and are protected as such, without prejudice to the copyright in each of the works forming part of such collections.

Attention should also be paid to the distinction under Dutch law between works of joint authorship, verzamelwerken and works of fictional authorship (fictief makerschap). Article 6 of the Dutch Copyright Act states that “if a work has been made according to the draft and under the guidance and supervision of another person, that person shall be deemed the author of the work.” The provision is a Dutch idiosyncrasy with limited applicability. The rule is intended to cover cases where the intellectual and the physical effort put into the creation of a work derive from different persons. The classic example used to illustrate the situation is that of the Dutch masters overseeing in large workshops, retaining intellectual control and decision-making power over the final result, while delegating the mechanical execution of instructions to apprentices and students. This intellectual control is the decisive factor in determining the applicability of the article. If a work is one of fictional authorship, then the term of protection is calculated from the date of death of the supervisor.

1.3. Official Documents

The treatment of public sector information is another concept which currently remains unharmonised under the European copyright directives. Article 2(4) of the Berne Convention leaves it up to the Contracting Parties to determine the copyright protection to be granted to official texts of a legislative, administrative and legal nature, and to official translations of such texts. The same approach is taken towards political speeches and speeches delivered in the course of legal proceedings (Article 2bis(1)). As a result, this is yet another area in which EU Member States are free to pursue their national idiosyncrasies without falling foul of EU or international law.

Of the selected states some grant no copyright protection at all to certain types of official documents. In the Netherlands, Article 11 of the Auteurswet excludes laws, decrees or ordinances issued by a public authority or in a judicial or administrative decision from copyright protection. Similarly, in Spain no copyright is granted to legal or regulatory provisions or drafts thereof, judgments of jurisdictional bodies, acts, agreements, deliberations or rulings of public bodies or official translations of all such texts, while in Italy no copyright subsists official acts of the State or of a public administrations, whether Italian or foreign.

The Czech Republic has a detailed list of excluded official material, including the following: official works, such as legal regulations, decisions, public charters, publicly accessible registers and collections of their records, official drafts of official works and other preparatory official documentation including the official translation of such a work, Chamber of Deputies and Senate publications, memorial chronicles of municipalities (municipal chronicles), state symbols and symbols of regional self-governing units, and other such works where there is public interest in their exclusion from copyright protection. In the Czech Republic political speeches and addresses presented during official proceedings also receive no copyright protection. In all the above cases, the term of protection becomes irrelevant, as no copyright subsists in the first place.

In the UK detailed provisions rule the term of protection of official documents. Section 163 CDPA introduces the concept of Crown copyright, i.e. copyright that subsists in works made by Her Majesty or an officer or servant of the Crown acting in the course of his/her duties. Crown copyright lasts until the period of 50 years after the work’s publication, if such publication took place within the period of 70 years after creation, or, if no such publication takes place, until the end of the period of 125 years from the work’s creation. If the document is an Act of Parliament, Act of the Scottish Parliament, Measure of the National Assembly for Wales, Act of the National Assembly for Wales, Act of the Northern Ireland Assembly or Measure of the General Synod of the Church of England, Crown copyright lasts for 50 years after the end of the year in which Royal Assent was given. According to s. 165 CDPA, Parliamentary copyright subsists in works made by or under the direction or control of the House of Commons or the House of Lords, while, finally, if the work was created by an officer or employee of an international organisation, i.e. an organisation whose members include one or more states, the first owner of copyright is the organisation. In both cases, copyright lasts until 50 years from the end of the year in which the work was made. If the work is a Parliamentary Bill, a Bill of the Scottish Parliament, a Bill of the Northern Ireland Assembly, or a Bill of the National Assembly for Wales, copyright ceases with Royal Assent or, if the Bill does not receive Royal Assent, on the


27 Art 13 of the Spanish Intellectual Property Law, Article 5 of the Italian Copyright Law.
withdrawal or rejection of the Bill or the end of the Session.

In France, the Intellectual Property Code does not touch upon the question of official documents explicitly; nevertheless it has traditionally been held in the case law that author’s rights cannot be invoked in protection of legislative and regulatory texts, as well as judicial decisions, as the vary nature of such works intends them for wide distribution. The exception is not applicable to compilations or commentaries of laws providing added value. 28

1.4. Previously Unpublished Works

Article 4 of the Term Directive obliges Member States to recognise protection equivalent to the economic rights of the author for the person who, after the expiry of copyright, takes the initiative of publishing for the first time a previously unpublished work. The right is a specific neighbouring right, not to be confused with an extension of the term of copyright protection or with a parallel related right for the author’s legal successors. The term of protection recognised for such rights is 25 years after the date of publication.

Divergences appear among the implementations of this provision in the national laws of the six examined states. For example, uncertainty seems to exist as to whether the phrase “after the expiry of copyright protection” covers works in which copyright never subsisted. A strict interpretation of the phrasing would seem to exclude that possibility. Most states have simply copied the text of the Directive; Spain explicitly includes any “unpublished work that is in the public domain” (Article 129, Spanish Intellectual Property Law), while the Netherlands likewise explicitly extends the reach of the right to works which never benefited from copyright protection at all, under the condition that the author died more than 70 years ago (Article 45o(3), Dutch Copyright Act). Divergences in implementation should however be seen as fully compatible with the Directive; even if an Member State sanctions a broader interpretation than that intended by the European legislator, Member States’ freedom to introduce new related rights other than those foreseen in the Directive will catch the discrepancy. 29

It is worth noting that in the UK, the implementation of the provision is for the time being only likely to find very small practical significance, limited to unpublished artistic works other than engravings. This is due to the interaction of the rule with the UK’s recognition of copyright protection until the year 2039 for all works whose authors have died and which were unpublished before 1989 (see below Section 2.6.3.). 30

1.5. Moral Rights

The Term Directive does not harmonise the duration of protection of moral rights, as it explicitly stated both in Article 9 and Recital 20. By contrast, Article 6bis(2) of the Berne Convention requires Contracting Parties to protect moral rights at least as long as economic rights, but then goes on to permit countries whose legislation at the moment of their ratification of or accession to the treaty did not provide for moral rights protection after the death of the author to maintain such rules. Wide divergences in the term of moral rights protection have thus resulted across the EU.

In the selected states examined for this report four countries recognised a perpetual duration for at least some moral rights. In France, according to Article 121-1 the author’s moral right to the respect for his/her name, authorship and work is perpetual, while in Spain, the Czech Republic and Italy the rights of paternity and integrity likewise have no time-limit. 31 In the UK, moral rights (right to be identified as author or director, right to object to derogatory treatment of work and the right to privacy of certain photographs and films) endure as long as copyright subsists in the work. The right to object to false attribution however lasts only for 20 years after the death of the person to whom the work or film is false attributed. 32 In the Netherlands the situation is slightly more complicated. The Dutch Copyright Act does not per se set a limit to the duration of moral rights separate from that of the economic rights. Article 25(2) however confers moral rights after the death of the author to the person designated by the author for this purpose in his/her last will and testament or a codicil thereto. In this case moral rights expire along with the expiry of the economic rights of the author. Absent the designation of such a person by the author, moral rights may not be exercised even by the author’s next of kin or other heirs.

The result is two separate regimes for the determination of the term of protection: an EU harmonised regime for economic rights and a domestic one for moral rights. The same work will thus attract widely divergent moral rights depending on the jurisdiction in which protection is sought.

It should be noted that Article 5 WPPT obliges contracting states to recognise a set of moral rights for performers as well. These must be maintained after the death of the performer at least until the expiry of the economic rights. As with the moral rights of authors, the duration of the moral rights of

29 It should of course be noted that Recital 19 of the Term Directive requires such new related rights to be notified to the Commission for reasons of transparency.
31 Article 15(1) of the Spanish Intellectual Property Law, Article 11(5) of the Czech Copyright Law and Article 23 of the Italian Copyright Law.
32 S. 86 CDPA.
performers are likewise not harmonised under the Term Directive.

2. Exceptions to Harmonisation

Recital 19 of the Term Directive clarifies that Member States are free to maintain or introduce new rights related to copyright, other than those mandatorily imposed on the European level. The Term Directive explicitly suggests, but does not limit Member States to, two such possibilities: the protection of critical and scientific publications and the protection of non-original photographs. The framework for the operation of such rights, including their term of protection, is placed entirely in the hands of national legislation, thus inhibiting harmonisation.

2.1. Critical and Scientific Publications

Under Article 5 of the Term Directive, Member States are offered the discretionary power to decide to offer protection to critical and scientific publications of works which have come into the public domain. The express inclusion of this non-mandatory right in the Directive is due to the desire of the European legislator to avoid confusion with the closely-related obligatory protection for previously unpublished works under Article 4. Since Article 5 provides little guidance, the precise modalities of the right, including the definition of “critical and scientific publications” and the determination of the initial owner of the right, are free to be determined on the national level. In any case, critical and scientific publications should be distinguished from adaptations of underlying public domain works or independent critical and scientific works; although the two categories may overlap, if, for example, such an edition is accompanied by critical analysis, comments or annotations, the latter may, on condition of originality, qualify for independent copyright protection in the strict sense. In any case, critical and scientific publications should be distinguished from adaptations of underlying public domain works or independent critical and scientific works; although the two categories may overlap, if, for example, such an edition is accompanied by critical analysis, comments or annotations, the latter may, on condition of originality, qualify for independent copyright protection in the strict sense. The right should likewise not be confused with the protection of typographical arrangements encountered in some Member States (see below 2.3.) or the protection of previously unpublished works (see above 1.5.).

Should a Member State decide to provide protection for critical and scientific publications, the Term Directive imposes no fixed rule as to the term of protection, but only upper limit of 30 years from the time when the publication was first lawfully published. From among the six examined states, only Italy has chosen to introduce such a right to its copyright law. The protection there for such editions is 20 years after the first lawful publication by any means or in any form.

2.2. Unoriginal Photographs

The Term Directive does not introduce a comprehensive harmonisation of the protection of photographs, but instead imposes a single standard of originality for photographic works across the board of EU Member States (see above Section 1.1.). According to Article 6 Term Directive, original photographs are mandatorily protected under the regular rules for copyright and receive the usual term of protection of 70 years p.m.a.

Neighbouring rights protection for non-original photographs is left open under the Directive, which is also silent on the duration that such protection should attract. Two countries from among the selected six have introduced specialised related rights protection for non-original photographs in their jurisdictions: Italy, where non-original photographs receive a term of protection of 20 years after their creation, and Spain, where the protection endures for 25 years after creation. It should be noted that disparate originality thresholds may mean that photographs which are considered non-original in one jurisdiction will receive full copyright protection under the laxer standard of another.

2.3. Typographical Arrangement of a Published Edition

In the UK, under s.1(1)(c) and 9(2)(cd)CDPA, a copyright is granted to the publisher of a typographical arrangement of a published edition. The right is limited as it only applies to the published edition as a whole, i.e. the “product, generally between covers, which the publisher offers to the public”. The right does not arise in relation to artistic works or to the extent that a typographical arrangement is simply a reproduction of that of a previous edition. The duration of protection for the typographical arrangement of a published edition is 25 years after the year of first publication. It should be noted that the word “edition” in this context should not be confused with the use of the word to denote a reprinting of e.g. a textbook, where each subsequent edition introduces changes to the actual content of the text thus published. To this extent the right differs from the copyright that will normally arise even outside the UK, in countries which recognise related rights protection to critical and scientific publications, where added value is provided through the arrangement, annotation, collection or other editorial work exacted on (copyrighted or not) content. The right should also not be confused with the publication right conferred on the publisher of a previously unpublished work.

A similar right exists in Spain, where Article 129(2) of the Copyright Act grants publishers of works which are not protected by copyright or related rights the exclusive right to authorise the

33 Von Lewinski and Walter, p 581.
35 Von Lewinski and Walter, p 580.
reproduction, distribution and communication to the public of their editions, provided that these can be distinguished by their typographical composition, layout and other editorial characteristics. The limitation to only public domain works distinguishes this right from the UK provision. Protection is conferred for a period of 25 years following publication.

2.4. Computer-Generated Works

In the UK, where a literary, dramatic, musical or artistic works is computer-generated in the sense that it is created by a computer in circumstances such that there is no human author of the work, the author is considered to be the person by whom the arrangements necessary for the creation of the work were undertaken. This would probably include the person who operated the computer, as well as perhaps the person who provided or programmed it. Computer-generated works should not be confused with computer-assisted works, i.e. works whose human author simply used the computer as a calculator to aid him/her in the production of the final result. An example of a computer-generated work would be the text that resulted from the use of an automated translation programme or the result page generated by a search engine. In cases of computer-generated works, a special exception is introduced to the rules on duration to the effect that protection lasts for a period of 50 years after the creation of the work.

2.5. Longer Terms of Protection

According to Article 10(1) Term Directive, “where a term of protection which is longer than the corresponding term provided for by [the Directive] was already running in a Member State on 1 July 1995, this Directive shall not have the effect of shortening that term of protection in that Member State.” The longer term is protected as a duly acquired right. The longer term of protection will apply for all works and subject matter protected in at least one Member State on 1 July 1995 (see below Section 6), but only within the Member State in which the term was in force prior to the entry into force of the Term Directive. From among the six states under examination, three (France, Spain and the UK) have provisions that stand out in connection to this rule.

It is worth noting that whether an already running term of protection is longer than the term granted by the Term Directive will not always be self-evident. This will especially be the case in relation to works of joint authorship. For example, in countries in which films prior to the transposition of the Directive were protected from the death of the longest living author, as opposed to the designated four persons of Article 2 Term Directive, there will be no way of knowing which of the multiple persons involved will prove to be the longest living prior to the demise of all. This is, for example, currently the situation in the Netherlands.

Can a Member State opt to adopt legislation that shortens a previously longer term of protection in order to bring it into line with the rules of the Term Directive? The neutral language of Article 10(1) itself seemingly leaves that possibility open, but the Recital 10 demand for due regard for established rights as one of the general principle’s of law of the Community legal order speaks against such an assumption.

2.5.1. France and War-Related Term Extensions

In France, the Intellectual Property Code contains three provisions extending the term of protection for works published during WWI /WWII or whose authors died for France during the wars. To compensate the loss and difficulties of commercial exploitation of the works during WWI and WWII, the Parliament added, in 1919 (introduced by the Law of 3 February 1919) and in 1951 (introduced by Law of 21 September 1951), two extensions of the term of protection:

Under Article L. 123-8 of the CPI, the rights vested in the heirs and successors of authors, composers and artists shall be extended for a period of 6 years and 152 days for works published before the Signature of the Versailles Treaty and which did not fall into the public domain on 3 February 1919.

Under Article L. 123-9 of the CPI, the rights vested in the heirs and successors of authors, composers and artists shall be extended for a period of 8 years and 120 days for works published before 1 January 1948 and which did not fall into the public domain on 13 August 1941.

The starting point of these extensions is not the author’s death but the publication of the work. It should be noted that the two extensions can be added for a work published during WWI, which can benefit then of an extension up to 14 years and 272 days. The provision is particularly interesting in that it can conceivably result in different terms of protection for works of the same author, even in if they would otherwise fall under term of protection provisions that connect the duration of protection with the death of the author.

38 S.9(3) CDPA.
40 L. 123-9 of the CPI, the rights vested in the heirs and successors of authors, composers and artists shall be extended for a period of 8 years and 120 days for works published before 1 January 1948 and which did not fall into the public domain on 13 August 1941.
41 Recital 10, Term Directive.
43 Von Lewinski and Walter, p. 617.
To compensate the premature death of an author who died for France, the Parliament also added in 1951 (introduced by Law of 21 September 1951) a third extension of term of protection:

Under Article L. 123-10 of the CPI, works of authors, composers and artists who died for France during WWI or WWII should benefit from an extra protection of 30 years.

These articles were not repealed by the Parliament when it implemented Directive 93/98/EEC into French law. However, in two decisions of 27 February 2007 concerning non-musical works, the Court of Cassation excluded the application of Article L. 123-8 and Article L. 123-9 by interpreting them in the light of Directive 93/98/EEC. The Court ruled that the new harmonised term (70 years p.m.a. instead of 50 years p.m.a.) absorbed the “extensions due to wars”, without shortening longer terms of protection that would have started before 1 July 1995. The Court of Cassation applied Article 10 (1) of the Directive providing the respect of established rights ("Where a term of protection which is longer than the corresponding term provided for by this Directive was already running in a Member State on 1 July 1995, this Directive shall not have the effect of shortening that term of protection in that Member State").

Taking into account the fact that musical works benefitted from a term of protection of 70 years p.m.a. and non-musical works from a term of protection of 50 years p.m.a. before 1 July 1995, commentators have concluded that:

- Extensions due to wars are absorbed in the longer term of protection for non-musical works:
  Under the previous regime, a work published during WWI would benefit from a term of protection of 64 years and 272 days (50 years p.m.a. + 14 years and 272 days); a work published during WWII would benefit from a term of protection of 58 years and 120 days (50 years p.m.a. + 8 years and 120 days).
  → These two terms of protection are lower than the new harmonised term (70 years p.m.a.). Therefore, only the term of 70 years p.m.a. will apply.

- Extensions due to wars subsist for musical works since they benefitted from a longer term of protection before 1 July 1995:
  Under the previous regime, a work published during WWI would benefit from a term of protection of 84 years and 272 days (70 years p.m.a. + 14 years and 272 days); a work published during WWII would benefit from a term of protection of 78 years and 120 days (70 years p.m.a + 8 years and 120 days).
  → These terms of protection are higher than the new harmonised term (70 years p.m.a) and should continue to subsist.

In the two decisions of 27 February 2007, the Court of Cassation did not have to rule on the fate of Article L. 123-10 of the CPI, which provides for an extra extension of term of 30 years if the author died for France during WWI or WWII. A legal uncertainty regarding the application and interpretation of Article L.123-10 thus remains:

In case of musical works whose authors died for France, the term of protection should be 70 years p.m.a + 30 years i.e. 100 years. In the event the musical work was published during WWI, an extra extension of 14 years and 272 days should be added. The term of protection of a musical work published during WWI and whose author died for France is therefore 114 years and 272 days. It should be noted that if the musical work has been published during WWII, the extra extension is 8 years and 120 days and the total term of protection 120 years and 120 days.

This interpretation is in line with Article 10(1) of Directive 93/98/EEC and the ruling of the Court of Cassation on the longer term of protection existing before 1 July 1995.

In case of non-musical works whose authors died for France, commentators are divided on how to calculate the term of protection:

a) Some consider that the extensions due to wars are not applicable as they are absorbed in the new harmonised term of protection. As a consequence, only the extension due to the circumstance of the death of the author (30 years) should apply.

Therefore, a non-musical work, whether published or not during WWI or WWII, and whose author died for France will benefit from a term of protection of 70 years p.m.a. + 30 years i.e. 100 years.

b) Whereas others consider that the calculation should be made as if the situation occurred on 1 July 1995 i.e. under the previous regime since the total term of protection would be higher than 70 years p.m.a.

As a consequence, a non-musical work whose author died for France would benefit from a term of protection of 80 years (i.e. 50 years p.m.a. + 30 years); for a work published during WWI, 14 years and 272 days are added (i.e. 94 days and 272 days) and for a work published during WWII, 8 years and 120 days are added (i.e. 88 years and 120 days).

In the French Calculator, as a precautionary measure, we have opted for a term of protection of 100 years for non-musical works whose authors died for France, whether the works were published during WWI/WWII or not.

The case of a non-musical work published during WWI or WWII and written by an author who died for
France is not hypothetical. Several famous authors belong to this category (e.g. Antoine de Saint-Exupéry, Guillaume Apollinaire, Charles Péguy).

It should be noted that, prior to the implementation of the Term Directive, Italy also provided for a 6-year term extension for wartime for works by Italian authors published prior to 17 August 1945. This was abolished with the transposition of the Term Directive in 1996. In addition, under the Treaty of Peace Italy signed in 1947, copyrights that were still effective on the date World War II started and that still belonged at that time to nationals of the other treaty parties, were extended from that date till 25 December 1947. It is unclear whether the new Term Directive terms also absorb the latter extension.

2.5.2. Spain’s 80 Year p.m.a. Rule

In Spain the term of protection under the 1897 Law on Intellectual Property was 80 years after the death of the author. Following the legislative curtailment of this term by 20 years in 1987 to a total of 60 years after the death of the author, transitional provisions were introduced in the benefit of works whose authors died before 7 December 1987. For such cases, the term of protection remains 80 years p.m.a. In accordance with the principle of non-discrimination and the provisions of the Term Directive, the 80-year p.m.a. rule applies in Spain to all copyright works whose country of origin is an EU Member State or whose author is a Community national, if said author died before 7 December 1987.

2.5.3. Unpublished Works in the UK

Under the 1911 Copyright Act in the UK, unpublished literary, dramatic and musical works, as well as engravings, were protected for 50 years from the date of publication. This in effect bestowed perpetual copyright on the owners of such works, as long as they refrained from publication. This excessively indulgent rule was revoked with the 1988 Act, which capped the term of protection of copyright works, whether published or not, at 50 years after the death of the author. Works which were unpublished at the time of the author’s death and remained that way until 1 January 1989 were to receive copyright protection for 50 years from 1 January 1990, i.e. until 31 December 2039.

2.5.4. Sir James Matthew Barrie’s Peter Pan

Although not technically a term of protection extension as such, it is necessary to mention that special status enjoyed by Peter Pan under UK law. As a special concession to the Great Ormond Street Hospital for Sick Children in London, to which JM Barrie donated his copyright in the play, at the very last stage of the Parliamentary progress of the CDPA 1988, a sui generis right was created exclusively for the protection of that play and any adaptation of that work. Under section 301 and Schedule 6 CDPA, the Hospital trustees have been granted a right to a royalty without limit of time in respect of any public performance, commercial publication or communication to the public, notwithstanding the expiry of copyright in the play on 31 December 1987. The right may not be assigned and will cease to exist if the trustees purport to assign or charge or if the Hospital ceases to have a separate identity or ceases to have purposes which include the care of sick children.

3. Protection Vis-à-Vis Third Countries

3.1. Copyright

The Term Directive introduces the rule of comparison of terms to the Community legal order: according to Article 7, where the country of origin of the work is not an EU Member State and the author of the work is not a Community national, the protection granted by Member States will last as long as it would in the country of origin of the work, but may not exceed the term laid down in the Directive. This is in conformity with the international rule of comparison of terms, as established in Article 7(8) of the Berne Convention. As a result, if a work is protected for 50 years post mortem auctoris in its (non-EU) country of origin, that will be the term of protection in all EU Member States as well. If however the (non-EU) country of origin of the work grants authors protection for 80 years after their death, the term of protection within the EU will be limited to 70 years post mortem auctoris.

The country of origin is determined on the basis of Article 3(4) and 5(4) of the Berne Convention. A Community national is a person or entity with the nationality of an EU Member State. The reference to Community nationals in the Directive should be taken as also including the nationals of contracting states to the European Economic Area Agreement. A mere resident is not considered to be a national. Confusion may arise in cases where the country of origin of the work is not immediately apparent, such as, for example, in the case of several joint authors with different nationality, where the author has dual or multiple nationality or where the author’s nationality changes during his/her lifetime. Likewise, the term of protection in cases where several countries of origin exist, one or all of which have, during the time when the work is protected, reduced or extended their term of protection. Von Lewinski


47 CDPA, Schedule 1, para. 12(4).

and Walter suggest that in all such cases of uncertainly the author’s interests must prevail and the country providing the longest term should be decided upon as being the country of origin for purposes of term calculation.49 Although different opinions are also held among scholars, in the construction of the Decision Trees this has been the interpretation followed in the benefit of erring on the side of caution. Finally, difficulties may also arise where a new EU Member State, before joining the EU, had a term of protection shorter than that imposed by the Term Directive. Transitional provisions may solve this issue internally, but whether other EU Member States, which would prior to accession would have applied the rule of comparison of terms, are obliged to recognise longer protection for works whose authors have already died or for which protection has already lapsed is unclear.50

Article 7 of the Term Directive does not establish a complete EU regime for the treatment of aliens in the field of copyright and related rights; instead it presupposes the existence of further national rules and international, regional or bilateral treaties. Whereas this approach is explicitly states in Article 7(2) with regard to related rights, an equivalent concept should be assumed with regard to copyright.51 In any case, Article 7(3) permits Member States to abide by existing international obligations towards non-EU Member States which impose longer terms of protection, such as bilateral or regional treaties, barring the conclusion of international agreements on the term of protection of copyright or related rights. If the author of the work is not a national or resident of a country party to the international copyright treaties (namely, the Berne Convention, WCT, TRIPS Agreement and Universal Copyright Convention) and if the work was not first published in such a state or simultaneously published in such a state and a state not party to any of these treaties, then the work shall be considered to be in the public domain within all EU jurisdictions. It should be noted however that this is a very rare possibility.

3.2 Neighbouring or Related Rights

As with copyright, the Term Directive also prescribes reciprocity with regard to related rights. Thus, Article 7(2) stipulates that the term of protection granted by an EU Member State shall expire no later than the date of expiry of the protection granted in the country of which the right-holder is a national, but may not exceed the term laid down in the Directive. Thus, the Term Directive hinges the comparison regime solely on the criterion of nationality of the right-holder, side-stepping points of attachment that might be set forth in the relevant international treaties. Nevertheless, the rule is explicitly without prejudice to the international obligations taken on by the Member States. As a result, given that the main international treaties on related rights do not all depend protection on the nationality of the right-holder, other parameters, such as the territory in which the performance, recording or broadcast took place, might also come into play.

The reluctance with regard to related rights is due to the relatively undeveloped condition of international related rights protection in comparison to that of copyright at the time when the Term Directive was adopted. Since then, international convergence in this field has been greatly improved by means of the WPPT and TRIPS Agreement.52 The freedom left to the Member States continues to carry particular weight as regards the protection of the first fixation of films, for which no international treaty currently regulates questions of international recognition.

As is stated explicitly in an information box accompanying each of the Decision Trees, in relation to neighbouring or related rights (i.e. rights over performances, phonograms, the first fixation of a film and broadcast) the Public Domain Calculator only applies when at least one of the right-holders is a national of an EEA state. The decision to exclude international situations from the application of the flowcharts was taken in view of the extraordinarily complex legal assessments that are involved in the mere recognition of, as well as the calculation of the term of, protection in this area.

Of the main international treaties pertaining to related rights:

- The Rome Convention grants a minimum term of protection of 20 years from when (a) the fixation was made, for phonograms and the performance incorporated therein; (b) the performance took place, for performances not incorporated in phonograms and (c) the broadcast took place, for broadcasts (Article 14);
- The WPPT recognises a term of protection for performers of 50 years from (a) when the performance was fixated in a phonogram, for performers and (b) the phonogram was published or, failing such publication, the fixation was made, for the producers of phonograms (Article 17);
- The TRIPS Agreement sets a term of protection of (a) 50 years from when the fixation was made or the performance took place, for performers and phonogram producers and (b) 20 years from when the broadcast took place, for broadcasting organisations (Article 14(5));
- For phonogram producers, the Geneva Phonograms Convention, to the extent that contracting states decide to regulate the duration of protection, sets a minimum of 20 years from when the phonogram was first fixated or first published (Article 4);

49 Von Lewinski and Walter, p. 596.
51 Von Lewinski and Walter, p 591.
52 Von Lewinski and Walter, p 599.
- Currently, no international treaty covers the provision of protection to film producers.

Article 4 and 5 Rome Convention oblige contracting states to grant national treatment to foreign performers and phonogram producers connected, in at least one of the ways listed in the article, to another signatory of the convention. Article 2(2) explains that “[n]ational treatment shall be subject to the protection specifically guaranteed, and the limitations specifically provided for, in this Convention.” Disagreement has arisen between legal writers as to the correct interpretation of this provision. Some commentators have expressed the opinion that the sentence has the effect of limiting the obligation to grant national treatment under the condition that the minimum standards set by the Convention are met. Others conclude however that the article is intended to act as a guarantee that these standards are abided by, regardless of the treatment afforded to nationals. The second opinion has the advantage of seeming to be confirmed by the records of the Rome Convention.

By contrast, the WPPT, TRIPS Agreement and Geneva Convention do not impose national treatment obligations, satisfying themselves with the observance of the protection they explicitly define. Higher domestic standards need not be met for foreign right-holders. As a result, any contracting state is free to impose a comparison of terms rule or to arbitrarily offer a lower standard of protection, provided the rules set out in each instrument are respected.53

Another significant difference between the international norms on copyright and those dealing with related rights involves the number of signatory states the relevant treaties have attracted. The Rome Convention, the most popular related rights treaty, has a total of 91 contracting parties. The WPPT is a close second with 86 signatory states, while the Geneva Convention has been signed by a mere 77 countries. By contrast, the Berne Convention has 164 contracting parties (compare to a total of 192 United Nations Member States).54 The newer WCT only has 88 contracting states, but the membership of TRIPS, which makes adhesion to Berne mandatory, coincides with that of the World Trade Organisation (WTO) and comes up to 153 states.

With regard to related rights, Article 7 of the Term Directive limits itself to the rights dealt with in Article 3, i.e. those of performers, producers of phonograms, broadcasting organisations and producers of first fixations of films. The protection of the third country owners of other related rights will thus depend exclusively on the rules of the domestic law of the Member States or their international obligations. This will be the case for example as regards the protection of the publisher of a previously unpublished public domain work (Article 4 Term Directive), critical and scientific publications (Article 5 Term Directive), non-original photographs (Article 6 Term Directive), or other related rights recognised in the legislation of the individual Member States (e.g. related rights protection for typographical arrangements or sporting events). In cases such as that of the protection of acrobats, musicians and circus or vaudeville artists, Member States will be bound by the provisions of the international treaties.

4. Term of Protection for Databases

The term of protection for original databases is governed by the regular rules on the term of protection of works of copyright as set out in the Term Directive. An original database is defined by the Database Directive as a database which, by reason of the selection or arrangement of its contents, constitutes the author's own intellectual creation (Article 3, Database Directive), i.e. the standard for originality is the same as that imposed by the Term Directive for original photographs. Both this term of protection and the originality standard are in conformity with the international rules set out in Article 2(5) of the Berne Convention, Article 5 of the WCT and Article 10 of the TRIPS Agreement.

Article 7 of the Database Directive further obliges Member States to extend a sui generis intellectual property right to the makers of non-original databases which, however, show that there has been, qualitatively and/or quantitatively, a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilisation of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database. The term of protection of such non-original databases is set in Article 10 of the Database Directive, according to which the sui generis right shall expire 15 years from the data of completion of the database or, if the database is made available to the public in whatever way before the end of this period, 15 years after it was thus made available. Importantly, any substantial change, to the contents of the database which could result in the database being considered to be a substantial new investment, qualifies the resulting new database for its own term of protection. As a result, the term of protection for dynamic, i.e. regularly updated, databases can be extended ad infinitum, resulting in perpetual protection. However, it should be noted that it is not clear whether such substantial changes simply qualify the pre-existing database for extended protection or whether a series of databases is thus created each one of which is granted its own individual term of protection, each

term commencing with the substantial change which signalled the creation of the new database.

With regard to the international reach of the sui generis right, Article 11 of the Database Directive limits application to databases whose makers or right-holders are nationals or residents of an EU Member State and to companies or firms formed in accordance with the law of a Member State which have their registered office, central administration or principle place of business within the Community. If the company or firm is not formed in accordance with the law of a Member State, but only has its registered office in the territory of the Community, its operation must be genuinely linked in an ongoing basis with the economy of a Member State. Pursuant to the EEA Agreement, this rule is expanded to include all EEA countries which are not EU members as well. This territorial limitation was possible, as the sui generis right is not covered by an international treaty, meaning that the rule of national treatment does not apply. Nevertheless, paragraph 3 of Article 11 does leave open the possibility of the Council, acting on a proposal of the Commission, to conclude international agreements extending the sui generis right to otherwise non-protected third country databases. In such case Recital 56 of the Database Directive makes clear that material reciprocity would be required.

5. Transitional Provisions

Article 10(2) of the Term Directive, stipulates that the terms of protection laid down in the Directive apply to all works and subject matter which were protected in at least one Member State on the 1 July 1995. This is in conformity with the general prohibition of discrimination on the basis of nationality within the EU under Article 12 EC Treaty. A series of ECJ case law has elaborated on the correct interpretation of this rule. In Ricordi, the Court held that the prohibition of discrimination holds true to cases where the author died before the EC Treaty came into force, while in Tod’s the ECJ clarified that discrimination on the basis of the country of origin is also forbidden. In Bob Dylan the Court clarified that it suffices that protection was recognised on 1 July 1995 in any Member State, regardless of whether that is the state in which protection is sought. Whether the person claiming protection is a Community national or not is not relevant. Finally, as has already been mentioned, it is uncertain what the legal situation is for works whose term of protection lapsed in all Member States due to comparison of terms prior to that state’s acceding to the EU, where the term of 70 years is still running.

The transition from a 50-year to a 70-year term that the transposition of the Term Directive meant for the majority of EU Member States resulted in widespread resuscitation of expired copyrights. For example, the works of Virginia Woolf came out of copyright in the UK on 1 January 1992, under the old UK term of 50 years after the death of the author, but were subsequently revived from 1 January 1996 till 31 December 2011. This rule applies across the EU and will occur as long as the work was (or ought to have been pursuant to the principle of non-discrimination) protected in at least one Member State on 1 July 1995. While this no doubt was a boon for right-holders, it put those who had exploited works they thought were out of copyright in a strange position. Article 10(3) of the Term Directive sought to smooth the transition by guaranteeing the legitimacy of acts of exploitation performed before 1 July 1995 and safeguarding the acquired rights of third parties. This means that no royalty is due for any editions of the works of Virginia Woolf published between 1992 and 1996 without license from the copyright owner, while such existing editions may also continue to be sold even past 1996.

In some cases more dramatic results ensue, particularly where the provisions of the Term Directive intersect with existing transitional provisions meant to bridge the gap between two or more older versions of the national rules on the term of protection. Complicated questions of transitional provisions have already been mentioned in passing in the sections above, as concerns, e.g. the 80-years term of protection for works of copyright in Spain or the extension of protection for unpublished works whose author had died before 1 August 1989 in the UK (see above Sections 2.6.2. and 2.6.3.)

In one case, the Term Directive includes a very specific transitional provision. With the amendment of the Term Directive in 2001 the term of protection for phonogram producers whose phonograms were communicated to the public before being published was expanded. According to Article 3(2), in such cases, if the rights of phonogram producers had expired under the old rules before 22 December 2002, but would have benefited from longer protection under the new rules, are nevertheless not protected anew.

56 Case C-28/04, Tod’s SpA, Tod’s France SARL v Heyraud SA, 30 June 2005.
57 Case C-240/07, Sony Music Entertainment (Germany) GmbH v Falcon Neue Medien Vertrieb GmbH, 20 January 2009.
58 Copyright and Related Rights Regulations 1996 (No. 2967), Part III.
Conclusion

Although the Term Directive aspired to establish a harmonised term of protection for works of copyright and related rights across the EU, in practice unharmonised pockets persist: national idiosyncrasies survive into the post-harmonisation era either by means of divergent interpretations given on the national level to terms used in the Directive, either due to exceptions to the harmonised rule. In some cases there can be doubt as to whether such national divergences are in compliance with EU law, but for the most part they are inbred into the Directive itself. Further harmonisation or the introduction of provisions that make the term of protection independent from substantive law terminology will have to be introduced before a truly unified term of protection applies across the EU. Some problems, such as those caused by transitional provisions or international obligations granting terms of protection longer than those foreseen in the Directive will not be eliminated for decades. The discrepancies between the term of protection rules of the examined six Member States has necessitated the construction of a separate electronic Public Domain Calculator for each jurisdiction.

The differences encountered between laws of the Member States should be kept in mind when applying the Calculators to information products. The Calculators are only as good as the information fed into them – if inaccurate information is provided, a correct term of protection is impossible to calculate. As a result, if, for example, the term of protection of a work of co-written piece of music is sought in France, the inclusion of such works within the French definition of work of joint authorship is important to remember. If by contrast, the same information product is put through the UK Public Domain Calculator, the fact that under UK law it will constitute two separate works, to each of which the Calculator should be applied, should be considered.

On this note, another important consideration to keep in mind when using the Public Domain Calculators is that, as has been noted in the first Information Box in each of the Flowcharts, a single product may contain more than one piece of copyright or neighbouring rights protected subject matter. For example, a CD will often comprise four layers of rights: the music fixated onto it may be covered by copyright, as may any lyrics accompanying the music. At the same time, the performers (whether musicians and singers or of any other description) and the phonogram producer may be protected by related rights. If the CD is sold in a case, any text or pictures on or in that case may also receive copyright protection. Similarly, a book may consist of text and illustrations, both of which may be covered by copyright. If an illustration in the book consists of a photograph of a painting, a third layer of protection may be added. Finally, depending on the jurisdiction, the typographical arrangement of the lettering might also be receive protection. The advent of the information society has propagated the combination of different content forms, particularly through the use of digital technology, complicating the entanglement of multiple rights in one and only multimedia product. All rights involved in a single information product should be correctly identified and the flowchart should be applied to each individually, if a correct conclusion is to be reached as to whether the item as a whole is in the Public Domain or not.

Finally, the need for regular updates of the Flowcharts and the corresponding online calculators in accordance with any future changes in international, European and ultimately national law should be considered. It should, for example, be kept in mind that the European Commission has proposed amending the Term Directive to extend the length of related rights in sound recordings from 50 years to 95 years. Currently, after an amendment by the European Parliament bringing the proposed duration down to 70 years, the proposal has stalled before the European Council. It is conceivable however that this or other modifications be adopted in the future, resulting in the need for small or extensive adjustments of the Flowcharts and consequently the Public Domain Calculators.

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Completed Questionnaires

1. Austria

Author: Marisa Pia Scholz

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

Federal Law on copyright in literary and artistic works and related rights (Bundesgesetz über das Urheberrecht an Werken der Literatur und der Kunst und über verwandte Schutzrechte) (UrhG-Urheberrechtsgesetz).

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Joint authorship:
Article 60: (1) The copyright of works of literature, musical art and graphic or plastic art whose author (Article 10 paragraph 1) is indicated in a way that justifies the presumption of authorship under Article 12 ends seventy years after the death of the author (Article 10 paragraph 1); in the case of a work created jointly by several authors (Article 11) the copyright ends seventy years after the death of the last living co-author (Article 10 paragraph 1).

Anonymous and pseudonymous works:
Article 61: The copyright of works whose author (Article 10 paragraph 1) is indicated in a way that justifies the presumption of authorship under Article 12 ends seventy years after they have been created. However, if the work is published before such time has expired, the copyright ends seventy years after the publication.

Serial works:
Article 63: Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully published, the term of protection shall run for each such item separately.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

Special regulation for joint authorship and collective works:

Joint authorship
Article 11: (1) If several persons have created a work jointly, and the results of their creation form an inseparable unit, all co-author shall have copyright jointly. (2) Each co-author has the right to legally prosecute infringements of the copyright. Any modification or exploitation of the work shall require the agreement of all co-authors. If one co-author refuses his consent without good reason, each other co-author may seek to obtain consent by judicial proceedings. If the defendant has no general forum within the country, the courts whose judicial district includes the first district of Vienna shall have jurisdiction. (3) The combination of works of different types – such as combination of a work of musical art with a literary work or a cinematographic work – shall not per se be grounds for co-authorship.

Term of protection: 70 years after the death of the last living co-author:

Article 60 (1) The copyright of works of literature, musical art and graphic or plastic art whose author (Article 10 paragraph 1) is indicated in a way that justifies the presumption of authorship under Article 12 ends seventy years after the death of the author (Article 10 paragraph 1); in the case of a work created jointly by several authors (Article 11) the copyright ends seventy years after the death of the last living co-author (Article 10 paragraph 1). (2) In deviation from paragraph 1, the resale right under Article 16b ends with the death of the author; for a work created by several authors, the resale right ends with the death of the last living co-author.

Collective works
Article 6: Collections that represent a unique intellectual creation from a compilation of individual contributions to a uniform whole are protected by copyright as collections; any existing copyright of the contributions remains unaffected.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?
Co-written musical works would be considered as works of co-authorship (Art 11). There are no other provisions in Austrian Copyright Law.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

No:

**Article 10**: (1) The author of a work is whoever has created it. (2) Under this law, the word "author", in addition to referring to the creator of the work, shall also refer to persons to whom copyright has transferred after his death, if reference to the provision of paragraph 1 does not stand to the contrary.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

**Article 62**: The copyright to cinematographic works ends seventy years after the death of the last of the following persons living: the principal director or the author of the script, the dialogue or the work of musical art created specifically for the cinematographic work.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

**Article 7**: (1) Laws, ordinances, official decrees, notices and decisions and official works produced solely or principally for official purposes of the kind referred to in Article 2(1) or (3) shall not enjoy copyright protection.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Art 3 has been implemented as follows:

**Article 67**: (1) The exploitation of rights of the persons referred to in Article 66 paragraph 1 and 5 expire fifty years after the recitation or performance; however, if a video or audio recording is published before the expiry of this period on which the recitation or performance has been recorded, such rights shall expire fifty years after such publication. Periods of expiration must be calculated in accordance with Article 64.

**Article 64**: When calculating terms of protection (Articles 60 to 63), the calendar year in which the fact initiating the term of protection has occurred should not be included.

**Article 66**: (1) Any person who recites or performs a work of literature or musical art has the sole right with the limitations defined by law to record the recitation or performance – including during broadcast – on video or audio media and to reproduce and distribute such recordings. Reproduction includes the use of the communication of the recitation or performance using video or audio media to transfer such onto other video or audio media. (5) Recitations and performances that take place at the request of an organizer may be recorded on video or audio media with the consent of the organizer only, insofar as there is no exception in law and subject to paragraph 1. Video or audio recordings produced contrary to this provision may not be reproduced or distributed.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

"Posthumous works"

**Article 76b**: Any person who legitimately publishes an unpublished work for which the protection period has expires shall have the same exploitation rights in the work as an author. This trademark right expires twenty-five years after publication; the period of expiration must be calculated in accordance with Article 64.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?
Yes. Works of photographic art (photographic works) are considered as works of applied art (Art 3). The term of protection of such original photographs is 70 years pma (see Art 60).

Non-original photographs are protected for a period of 50 years after the photograph is taken:

**Article 74:**  
(1) Any person who creates a photograph (producer) has the exclusive right under the limitations defined by law to reproduce and distribute the photograph, to publicly display it using optical equipment, and to broadcast and make it available to the public. The producer of photographs produced commercially is the owner of the business.  
(2) The producer’s exploitation rights under paragraph 1 can be transferred by sale and inheritance.  
(3) If the producer designates a photograph with his name (pseudonym, company), copies produced by other persons and intended for distribution must also be labelled with a corresponding reference to the producer. If a copy labelled in this way communicates the photograph with significant changes, the producer’s designation must include a corresponding note.  
(4) For copies labelled with a producer’s designation, the item designation given by the producer may also deviate insofar as such deviation conforms to practice in fair commerce.  
(5) After the death of the producer, the protection guaranteed to him by paragraphs 3 and 4 applies to the persons to whom the exploitation rights are transferred. If the exploitation rights are transferred to another person, the purchaser may also be granted the right to designate himself as producer of the photograph. In such a case, the purchaser shall be deemed the producer from then on and shall also enjoy the protection under the provisions of paragraphs 3 and 4, if he is named as producer on the individual photographs.  
(6) The trademark right shall expire fifty years after the photograph is taken; however, if the photograph is published before such time has expired, the copyright ends fifty years after the publication. Periods of expiration must be calculated in accordance with Article 64.  
(7) Articles 5, 7 to 9, 11 to 13, 14 paragraph 2, Article 15 paragraph 1, Articles 16, 16a, 17, 17a, 17b, 18 paragraph 3, Article 23 paragraphs 2 and 4, Articles 24, 25 paragraphs 2 to 6, Articles 26, 27 paragraphs 1, 3, 4 and 5, Article 31 paragraph 1, Article 32 paragraph 1, Article 33 paragraph 2, Articles 36, 37, 41, 41a, 42, 42a, 42b, 42c, 54 paragraph 1(3, 3a and 4) and paragraph 2, Articles 56, 56a, 56b, 57 paragraph 3a(1 and 2) 59a and 59b apply to photographs; Articles 56c and 56d apply to cinematographic creations correspondingly; however, Article 42a sentence 2(1) does not apply to reproduction of photographs produced commercially using a master image that has been produced in a photographic procedure.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

Databases are defined as:

**Article 40f:**  
(1) Databases within the meaning of this law are collections of works, data or other independent elements that are systematically or methodically ordered and are accessible individually by electronic means or in another way. A computer program that is used in the making or operation of an electronically accessible database is not a part of the database.  
(2) Databases are protected by copyright as collections (article 6) if they are a unique intellectual creation as a result of the selection or ordering of material (database works).  

The term of protection for original databases is 70 years pma (Art 60), for unoriginal databases 15 years after the creation:

**Article 76d:**  
(1) Any person who has invested within the meaning of Article 76c (producer) has the exclusive right under the limitations defined by law to reproduce and distribute the entire database or a significant part thereof in terms of nature or scope and to broadcast such, communicate it publicly and make it available to the public. Repeated and systematic reproduction, distribution, broadcasting and public communication of significant parts of the database shall be deemed exploitation acts if such acts are contrary to the normal exploitation of the database or impair the legitimate interests of the producer of the database.  
(2) The producer’s distribution right does not include lending (Article 16a paragraph 3).  
(3) The reproduction of a significant part of a published database is permissible  
1. for private purposes; this shall not apply to a database whose elements are accessible individually by electronic means;  
2. for academic and instructional purposes to an extent that would serve such purposes if such is not for commercial purposes and the source is indicated.  
(4) The database trademark right shall expire 15 years after the creation of the database; however, if the database is published before such a period has expired, the right shall expire 15 years after the publication. Periods of expiration must be calculated in accordance with Article 64.  
(5) Articles 8, 9, 11 to 13, 14 paragraph 2, Article 15 paragraph 1, Articles 16, 16a paragraphs 1 and 3, Articles 17, 17a, 17b, Article 23 paragraphs 2 and 4, Articles 24, 25 paragraphs 2, 3 and 5, Articles 26, 27 paragraphs 1 and 3 to 5, Article 31 paragraph 1, Article 32 paragraph 1, Article 33 paragraph 2 and Article 41 apply correspondingly.
13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

Sui generis protection only for unoriginal databases: 15 years after creation (see Art 76d)

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Scope of the law.

1. Literary and artistic works.

Works by citizens.

Article 94 A work shall enjoy the copyright protection of this law irrespective of whether and where it is released, if the author (Article 10 paragraph 1) or a co-author is an Austrian citizen.

Works released within the country and connected to national property.

Article 95 All works not already protected under Article 94 that are released within the country or works of graphic or plastic art that are elements of or that belong to a national property shall also enjoy the copyright protection of this law. Works not released within the country and not connected to national property that are by aliens.

Article 96 (1) Works by foreign authors (Article 10 paragraph 1) that are not protected under Articles 94 or 95 enjoy copyright protection without prejudice to treaties on the condition that the work of Austrian authors are protected in a similar way in the State to which the foreign author belongs, or at least in the same way as the works of persons belonging to that State. This reciprocity is assumed if it has been determined in an announcement by the Federal Minister of Justice with regard to the legal situation in the relevant State. Furthermore, the responsible authorities may agree such reciprocity with another State by treaty if such seems appropriate to protect the interests of Austrian authors.

(2) Article IV(4) paragraph 1 and Article IV paragraph 4 lit. a apply to the calculation of the period of protection that foreign authors enjoy for their works in Austria under the Universal Copyright Convention of 6 September 1952, BGBl No 108/1957, or under the Universal Copyright Convention, revised on 24 July 1971, BGBl No 293/1982.

2. Recitations and performances of works of literature and musical art.

Article 97 (1) Recitations and performances of works of literature and musical art that take place within the country are protected under the provisions of Articles 66 to 72 irrespective of the State to which the persons belong whose consent is required under Article 66 paragraphs 1 and 5 to record the recitation or performance on video or audio media.

(2) For recitations and performances that take place outside the country Articles 66 to 72 apply in favour of Austrian citizens. Foreigners are protected in the event of such recitations and performances without prejudice to treaties on the condition that the recitations and performances of Austrian citizens are protected in a similar way in the State to which the foreign author belongs, or at least in the same way as the recitations and performances by persons belonging to that State. This reciprocity is assumed if it has been determined in an announcement by the Federal Minister of Justice with regard to the legal situation in the relevant State. Furthermore, the responsible authorities may agree such reciprocity with another State by treaty if such seems appropriate to protect the interests of Austrian holders of exploitation rights under Article 66 paragraph 1.

3. Photographs.

Article 98 (1) The provisions of Articles 94 to 96 apply to the applicability of the provisions on the protection of photographs (Articles 73 to 74) correspondingly.

(2) If the producer is a legal entity, the requirement of Austrian citizenship is fulfilled if the legal entity is resident within the country.

4. Broadcasts and audio recordings

Audio recordings

Article 99 (1) Audio recordings are protected under Article 76 irrespective of whether and how they are released if the producer is an Austrian citizen. Article 98 paragraph 2 applies mutatis mutandis.

(2) Other audio recordings are protected under Article 76 paragraphs 1, 2 and 4 to 6 if they are released within the country.
(3) Audio recordings by foreign producers that are not released within the country are protected under Article 76 paragraphs 1, 2 and 4 to 6 without prejudice to treaties on the condition that the audio recordings of Austrian producers are protected in a similar way in the State to which the foreign producer belongs, or at least in the same way as the audio recordings of persons belonging to that State. This reciprocity is assumed if it has been determined in an announcement by the Federal Minister of Justice with regard to the legal situation in the relevant State. Furthermore, the responsible authorities may agree such reciprocity with another State by treaty if such seems appropriate to protect the interests of Austrian producers of audio recordings.

(4) Audio recordings by foreign producers not released within the country are also protected under Article 76 paragraphs 1, 2 and 4 to 6 if the producer belongs to a Contracting State of the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms of 29 October 1971, BGBl No 294/1982.

(5) In any case, foreigners only have the right to the protection under Article 76 paragraph 3 in compliance with treaties.

Broadcasts

Article 99a Broadcasts that are not transmitted within the country are only protected in compliance with treaties.

Posthumous works

Article 99b The provisions of Articles 94 to 96 apply correspondingly to the protection of posthumous works (Article 76b).

4a. Databases

Article 99c (1) Databases are protected under Article 76d if the producer is an Austrian citizen or has his main place of residence within the country. Article 98 paragraph 2 applies mutatis mutandis.

(2) Other databases are protected under Article 76d if the producer is a legal entity that has been constituted in accordance with the legal statues of a Member State of the European Community or of a Contracting State of convention on the European Economic Area and

1. has its main office or main place of business in one of these States or
2. has the main office under its statutes in one of these States and whose activity has a real, permanent connection to the economy of one of these States.


15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

No: Rights outlasting the term of protection.

Article 65: The creator of a work may assert his existing rights under Articles 19 and 21 paragraph 3 during his lifetime even if the term of protection has already ended.

Article 19: (1) If the authorship of a work is disputed or if the work is deemed to have a different creator, that creator shall have the right to exercise authorship for himself. In such cases, after the death of the creator, persons who have received the copyright shall have the right to keep the authorship of the creator of the work.

(2) A waiver of this right is invalid.

Protection of works.

Article 21: (1) If a work is used in such a way as to make it available to the public or copied for the purpose of distribution, no abridgements, additions or other modifications may be carried out by the holder of the right to exploit the work to the work itself, its title or to the author’s designation, insofar as the author has not given his consent to such or law permits the modification. Modifications are permitted in particular that the author cannot prohibit to the holder of the right to use the work in accordance with the traditions and customs applicable to fair commerce, notably modifications that are required by the nature or the purpose of the permitted exploitation of the work.

(2) For original works of graphic or plastic art, the provisions of paragraph 1 also apply if the originals are not used if a way that makes the work available to the public.

(3) Granting consent to unspecified modifications shall not prevent the author from opposing defacement, mutilation or other modifications to the work that seriously impair his intellectual in the work.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired
rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

In 1996 Austrian Copyright Law has been adapted to conform to the Term Directive (in force on April 1st, 1996)

Art VIII of the amendment regulated the term of protection as follows:

(1) This federal law does not apply as far as this would shorten an already running term of protection.
(2) As far as this federal law causes the extension of a term of protection, it applies to all works created, lectures and performances conducted, photographs taken and broadcasts before April 1st 1996
   1. for which the term of protection has not yet expired as of July, 1st, 1995 according to the previous regulations.
   2. which are protected in a member state of the EEA and for which the term of protection in this member state
      has not expired as of July, 1st, 1995.
(3) If the author (Article 10 paragraph 2 of the Copyright Law) creates an exclusive work exploitation right or
    grants a non-exclusive work exploitation right before this Federal law enters into force, in case of doubt such
    disposal shall not apply to the period of time of the extension of periods of protection under this Federal law;
    however, any person who has obtained an exclusive work exploitation right or a non-exclusive work exploitation
    right for payment shall remain entitled to exploit the work during such an extension on payment of an equitable
    remuneration. The same shall also apply mutatis mutandis to disposals of the protected rights to recitations and
    performances of works of literature and musical art, to photographs and audio recordings.
(4) As far as the protection for works, for which the term of protection has already expired according to the
    previous regulations, is reinstated according to paragraph 2, copies of such works which were started before July
    1st 1995 may be concluded also after March 31st 1996; these copies as well as copies already in existence
    before July 1st 1995 may be distributed also after March 31st 1996. This applies accordingly to lectures and
    performances of works of literature and music, to photographs and to broadcasts.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related
rights pass after the death of the rightholder (surviving spouse/ issue and other blood relatives/ the State via
escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the
relevant provisions of your national act?

No, there is no distinction made in Austrian Law.

18. In France an additional exception was introduced to the copyright act granting longer protection for works
made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété
intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant
provisions of your national act?

No

19. Can you think of any instances where the term of protection provided by your national legislation was longer
than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term
Directive? Was your national legislation then amended in accordance with the Term Directive in a way that
affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national
act?

No

Art VIII of the amendment that adapted the Term Directive in 1996 says (see question 16.):

(1) This federal law does not apply as far as this would shorten an already running term of protection.
(2) As far as this federal law causes the extension of a term of protection, it applies to all works created, lectures and performances conducted, photographs taken and broadcasts before April 1st 1996
   1. for which the term of protection has not yet expired as of July, 1st, 1995 according to the previous regulations.
   2. which are protected in a member state of the EEA and for which the term of protection in this member state
      has not expired as of July, 1st, 1995.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly
describe the main features and functioning of the system.

No

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works
of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably
citing the relevant provisions of your national act.

No
2. Belgium

Author: Séverine Dusollier et Amélie de Francquen

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.


Link to the Copyright Act in French: http://suisse.juridat.be/cgi_loi/loi_F.pl?cn=1994063035

and in Dutch: http://suisse.juridat.be/cgi_loi/loi_N.pl?cn=1994063035

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Works of joint authorship: similar wording, same content, Copyright Act, art. 2, § 2, sub. 1.

Collective works: the Copyright Act does not provide provisions on collective works.

Anonymous and pseudonymous works: similar wording, same content, Copyright Act, art. 2, § 3.

Works published in parts, instalments, issues or episode: similar wording, same content, Copyright Act, art. 2, § 4.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

This distinction does not exist in the Copyright Act.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works are considered to be works of joint authorship. The Belgian law makes a distinction between divisible and indivisible works. In the divisible works, the contribution of each author is identifiable, such as an opera (author of the music/author of the libretto) or a cartoon (author of the screenplay/author of the dialogues). In the indivisible works, the contributions of the authors cannot be distinguished (i.e. a co-written article).

Although the legal regime of those two types of joint authorship differs, the duration of the copyright is calculated in the same manner.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

No, the original author of a work in Belgium can only be the natural person who created the work (article 6, § 1 of the Copyright Act).

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Yes, in addition to the principle director, are considered to be co-authors of audiovisual works (that include cinematographic works), the natural persons who have collaborated to the work (art. 14 of the Copyright Act). Are considered, unless otherwise proved, to be author of a audiovisual work realised in joint authorship:

- the author of the screenplay,
- the author of the adaptation,
- the author of the texts,
- the author of the animation works or animation sequences of audiovisual works that represent a significant portion of this work; and
- the author of the music with or without lyrics specifically created for use in the work.

Furthermore, authors of the original work are considered to be authors of the derivative work, if their contributions are used in this derivative work.

The term of protection of audiovisual works expires 70 years after the death of the last of the following persons to survive (art. 2, § 2, sub. 2 of the Copyright Act):
- the principal director;
- the author of the screenplay;
- the author of the texts; and
- the author of the music with or without lyrics specifically created for use in the work.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No, official documents of the authority are not protected by copyright: article 8, § 2 of the Copyright Act « § 2. Les actes officiels de l'autorité ne donnent pas lieu au droit d'auteur. »

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, article 3 has been implemented in the Copyright Act (terms of protection are calculated from the first day of January of the year following the relevant event):
- art. 38 for the performers: 50 years after the date of the performance.
  But if the fixation of the performance is subject of a lawful publication or a lawful communication to the public, the rights shall expire 50 years after the date of the first occurrence.
- art. 39, § 1, sub. 5-7 for the producers of phonograms and of the first fixation of a film:
  The rights of producers of first fixations of films expire 50 years after the fixation. However, if the first fixation of the film is subject of a lawful publication or a lawful communication to the public during this period, the rights expire 50 years after the date of the first occurrence.
  The rights of producers of phonograms expire 50 years after the fixation. However, if the phonogram has been lawfully published during this period, the rights expire 50 years after the date of the first lawful publication. If there is no lawful publication during the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public during this period, the rights shall expire 50 years after the date of the first lawful communication to the public.
- art. 45 for the broadcasting organisations: 50 years after the date of the first broadcast of the program.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, article 4 has been implemented in the Copyright Act (art. 2, § 6, exactly same wording).

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

Non-original photographs are not protected under Belgian copyright law (note that article 2 § 5 of the copyright Act says that photographs which are original are protected by copyright).

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

Original databases are protected by the Copyright Act (art. 20bis – 20quarter), they are thus protected during the lifetime of the author until 70 years after his death.
Unoriginal databases are protected by the sui generis right. They are protected by the Act of August 31, 1998 implementing in Belgian Law the EC directive of March 11, 1996 concerning the legal protection of data bases (in French : Loi transposant en droit belge la directive européenne du 11 mars 1996 concernant la protection juridique des bases de données).

The term of protection (art. 6 of the Belgian Act protecting databases) is the same as the one provided by the Directive.

If the unoriginal database shows that there has been a substantial investment, it is protected from the date of completion of the making of the database. The right expires 15 years from the first of January of the year following the date of completion.

In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by that right shall expire 15 years from the first of January of the year following the date when the database was first made available to the public.

Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Article 79 of the Copyright Act implements article 7 of the Term Directive.

« Art. 79. Sans préjudice des dispositions des conventions internationales, les auteurs et les titulaires de droits voisins étrangers jouissent en Belgique des droits garantis par la présente loi sans que la durée de ceux-ci puisse excéder la durée fixée par la loi belge.

Toutefois, si ces droits viennent à expirer plus tôt dans leur pays, ils cesseront au même moment d'avoir effet en Belgique.

En outre, s'il est constaté que les auteurs belges et les titulaires belges de droits voisins jouissent dans un pays étranger d'une protection moins étendue, les ressortissants de ce pays ne pourront bénéficier que dans la même mesure des dispositions de la présente loi.

Nonobstant l'alinéa 1er, la réciprocité s'applique aux droits à rémunération des éditeurs, des artistes-interprètes ou exécutants et des producteurs de phonogrammes ou de premières fixations de films, visés aux articles 55, 59 et 61bis, sans préjudice du Traité sur l'Union européenne. »

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

No, moral rights are not perpetual in Belgium (same duration as the economic rights).

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The duration of copyright was changed by the Copyright Act in 1994, following the harmonization by the Term directive 93/98/CE of October 29, 1993. The exact date of the entering into force is September 1, 1994.

Transitional provisions were introduced. Previously expired rights were being resuscitated for 20 years (protection was extended from 50 to 70 years). The Copyright Act specifies whose rights were being revived (art. 88).

« Art. 88. § 1er. La présente loi s'applique aux œuvres et prestations réalisées avant son entrée en vigueur et non tombées dans le domaine public à ce moment.

La loi s’applique aux bases de données créées avant l’entrée en vigueur de l’article 20bis et non tombées dans le domaine public à ce moment.

§ 2. Elle s’applique également aux œuvres et aux prestations qui, au 1er juillet 1995, sont protégées par le droit d’auteur dans au moins un État membre de l’Union européenne. »
Toutefois, la renaissance des droits ne pourra pas être opposée aux personnes qui ont entrepris de bonne foi l'exploitation d'œuvres ou de prestations qui appartenaient au domaine public avant le 1er juillet 1995, dans la mesure où elles poursuivent les mêmes modes d'exploitation.

§ 3. La présente loi ne porte pas préjudice aux droits acquis en vertu de la loi ou par l'effet d'actes juridiques, ni aux actes d'exploitation accomplis antérieurement à son entrée en vigueur.

§ 4. Les contrats concernant l'exploitation d'œuvres et d'autres éléments protégés, en vigueur à la date d'entrée en vigueur de la présente loi, sont soumis aux articles 49 et 50 à partir du 1er janvier 2000 s'ils expirent après cette date.

§ 5. Lorsqu'un contrat international de coproduction conclu avant le 1er janvier 1995 entre un coproducteur d'un État membre de l'Union européenne et un ou plusieurs coproducteurs d'autres États membres ou de pays tiers prévoit expressément un régime de répartition entre les coproducteurs des droits d'exploitation par zones géographiques pour tous les moyens de communication au public sans distinguer, le régime applicable à la communication au public par satellite des dispositions applicables aux autres moyens de communication, et dans le cas où la communication au public par satellite de la coproduction porterait préjudice à l'exclusivité, notamment linguistique, de l'un des coproducteurs ou de ses cessionnaires sur un territoire déterminé, l'autorisation par l'un des coproducteurs ou ses cessionnaires d'une communication au public par satellite est subordonnée au consentement préalable du bénéficiaire de cette exclusivité, qu'il soit coproducteur ou cessionnaire.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No similar distinction in Belgian law.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

Yes, the Act of June 25, 1921 (in French loi du 25 juin 1921 portant prorogation, en raison de la guerre, de la durée des droits de propriété littéraire et artistique) provides an extension of the copyright duration of 10 years because of the First World War. The protection at that time was of 50 years, it had thus been extended from 50 to 60 years. There is no extension for the Second World War.

The majority opinion considers that his war extension has been absorbed by the prolongation of the term from 50 to 70 years (Term Directive). There is no case law confirming that.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No longer protection has been provided than that provided by the Term Directive.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No, there is no Domaine Public Payant in Belgian law.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No.
3. Bulgaria

Author: Teodora Valentinova Tsenova

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

The law that governs protection of copyright and related rights in Bulgaria, including among others and their term of protection, is the Law on Copyright and Related Rights ("LCRR"), promulgated in State Gazette Issue No. 56 of 29 June 1993, last amended and supplemented State Gazette Issue No. 25 of 25 March 2011.

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The provisions of the LCRR on the term of protection of copyright may be found in Chapter 6 of the law. The general rule on the term of protection of copyright is set forth in Article 27, para. 1 according to which the term of protection of a work shall last the lifetime of the authors and for 70 years thereafter. The rules, providing for certain exceptions or modifications of the cited rule with respect to the works of interest, are as follows:

Joint authorship: Pursuant to Article 27, para. 2 of the LCRR for works having two or more authors, are protected for the lifetime of the authors and for 70 years thereafter as the 70-year term starts to run from the death of the last surviving author.

Collective works and works published in parts, instalments, issues or episodes: According to Article 30 of the LCRR copyrights in encyclopaedias, periodicals, collected works, anthologies, bibliographies, data bases and other similar objects that include two or more works or products, is protected for seventy years after their making available to the public. If the author of the work becomes known within that period, the general rule on the term of copyright protection, as set forth in Article 27 of the LCRR applies. As for works which are published in volumes, parts, issues, or episodes, under paragraph 2 of Article 30 the term of protection is 70 years from the making the work available to the public, as the term shall be calculated separately for each item.

Anonymous and pseudonymous works: Pursuant to Article 28 of the LCRR copyright in anonymous or pseudonymous works shall be protected for seventy years after the works have been first made available to the public. In the event that within the said term the author's identity is disclosed, or if the pseudonym leaves no doubt on the author's personality, the general rule on the term of copyright protection, as set forth in Article 27 of the LCRR would apply.

Under the law, the term of protection starts to run from January 1 of the year following the year of the author's death, respectively, the year when the work was made available to the public or published.

Finally, under Article 34 b of the LCRR, in the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been made available to the public within 70 years from their creation, the protection terminates.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

The LCRR does not contain express definitions of those terms.

Joint authorship is used in the law in relation to a work that has been jointly created by two or more persons. Copyright in such works arises jointly for the persons that have created the work, irrespective of whether the work is inseparable or may be divided into parts with independent value (Article 8, para. 1 of the LCRR). Works having two or more authors are protected for the lifetime of the authors and 70 years after the death of the last surviving author (Article 27, para. 2 of the LCRR).

Further, the terms collective works or compilations are not used in the law with the purpose to address different groups of copyright protected works. The approach chosen by the Bulgarian legislator is that different types of works that may be qualified as collective works or as compilations, are expressly but non-exhaustively mentioned in the law. Accordingly, Article 10 of the LCRR provides that copyright in periodicals and encyclopaedias arises for the natural or legal person that procures the creation and publication of the work. Pursuant to Article 11 of the LCRR, copyright in collected works, anthologies, bibliographies, databases and similar works, arises for the person that selected and arranged the materials, unless otherwise contractually agreed.

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The term of protection of compilations and collective works is seventy years after making them available to the public (Article 30 of the LCCR). It shall be noted that the heading of Article 30 of the law reads “Collective works”, while the types of works covered by that article are those, discussed in Articles 10 and 11 of the law. Irrespective of this, it may not be argued that collective works and compilations enjoy the same regime under the law (except for the term of protection) and placing the two types of works under the same heading should rather be considered as result of some legislative inconsistency.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

There are no express provisions in the law that co-written musical compositions shall be considered as works of joint authorship. In view of the fact that the music and lyrics are separate works (not inevitably created at the same time) the theory takes the position that they shall be classified as single works of authorship, with separate terms of protection.

As for examples of any of the types of works cited in the question, as explained above in the answer to question 3 above, the law lists certain types of collective works (collected works, anthologies, bibliographies, databases) and of compilations (periodicals and encyclopaedia). Additionally, the law contains special rules on copyright in films and other audiovisual works, the latter representing works of joint authorship.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

The general rule is that the author of a work of copyright can be a natural person only. A legal person can be the initial copyright holder (the law does not call it an author but copyright holder) only in the cases expressly provided for in the law. Those exceptions relate to copyright in (i) periodicals and encyclopaedias and (ii) computer programs and databases created in the course of employment. Additionally, with respect to anonymous and pseudonymous works, if a legal person was the first that with the consent of the author made the work available to public, such person exercises the rights of the author until the latter’s identity is disclosed (this rule does not apply for cases when the pseudonym does not leave any doubts regarding the identity of the author).

The situation is less clear with respect to works created under a commissioning agreement, where the law provides that copyright in such works arises for the author, unless anything else agreed between the parties (Article 42, para. 1 of the LCRR). There is no relevant court practice on this and some authors argue that on base of that rule copyright in works created under commissioning may arise directly for the commissioner (i.e. including and for a legal person), while others argue that this is not possible.

Finally, there are express rules on the term of copyright protection of computer programs and databases created in the course of employment. Under Article 28a of the LCCR, databases and computer programs with respect to which copyright has arisen for the employer, are protected for seventy years from making them available to the public.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Under the law, copyright in cinematographic and other audiovisual works arises jointly for the principle director, the director of photography, the author of screenplay and for animated films particularly - also for the art directors.

Under Article 29 of the LCRR, copyright in cinematographic and other audiovisual works shall expire 70 years after the death of the last surviving person among the principle director, the director of photography, the author of screenplay, the author of the dialogue and the composer of music if specifically created for use in that work. The 70-year term starts to run on 1 January of the year, following the year of the death of the last surviving person among the above enumerated.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Under Article 4, item 1 of the LCRR, the statutory acts and the individual acts of the state authorities, as well as their official translations, are not copyright protected. To the extent official documents does not classify as statutory acts or individual acts of the state authorities, the general rule on the requirements in order a work to be copyright protected, shall be consulted. Under the law, a work is copyright protected provided it is the result of the own intellectual creation of the author and it is affixed in any manner in a tangible form.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?
Article 3, para. 1 of the Term Directive has been implemented in Article 82 of the LCRR. Under it, the rights of performers last for 50 years. The 50-year term starts to run on 1 January of the year following the year of the performance. If within that period a fixation of the performance has been lawfully published or communicated to the public, the term starts to run on 1 January of the year following the year of the earlier of the above mentioned two events.

Article 3, para. 2 of the Term Directive has been implemented in Article 89 of the LCRR. According to it, the rights of the producers of phonograms last for 50 years. The 50-year term starts to run on 1 January of the year following the year of the fixation. If within that period the phonogram has been lawfully published, the term starts to run on 1 January of the year following the year of that publication. If the phonogram has not been lawfully published within that period but has been communicated to the public in any other manner, the term starts to run on 1 January of the year following the year of that communication.

Article 3, para. 3 of the Directive has been implemented in Article 90b of the LCRR. According to that article the rights of the film producer last for 50 years starting to run from 1 January of the year following the year of creation of the work. If within that term the work has been lawfully published or communicated to the public, the term starts from the year following that in which the earlier event has occurred.

The term of protection of the rights of radio and TV-organisations is regulated in Article 92 of the LCRR. According to it, those rights are protected for 50 years, starting from 1 January of the year, following the year of first broadcasting or transmission of the program.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Article 4 of the Term Directive has been implemented in the national legislation by the supplementation of the LCRR with Art. 34a, according to which the person that makes available to the public an unpublished work after expiry of the term of protection, without the work being published within it, enjoys the economic rights of the author for a term of 25 years starting from 1 January of the year in which the work was made available to the public.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The Bulgarian copyright legislation does not contain specific rules on critical and scientific publications of works which have come into the public domain, hence the Bulgarian legislator has not availed of the option provided by Article 5 of the Term Protection Directive.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

Under the assumption that original shall be interpreted as meaning to be the result of the author's intellectual creation, the LCRR does not provide for protection of non-original photographs.

The LCRR does not have rules particularly regulating the term of protection of photographs. Therefore, provided a photograph answers the statutory requirements for copyright protection, it shall be protected for the lifetime of its author and 70 years thereafter.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

Provided a database is the result of the author's own intellectual creation (original database), it will be subject to copyright protection, where pursuant to Article 30, Para. 1 of the LCRR the term of protection is 70 years from making available to the public. If within that term the author of the database becomes known, then the general rules on the term of protection would apply (protected for the author's lifetime and 70 years thereafter).

There is one exception from the above rule, which is applicable to databases created in the course of employment, copyright in which arises by virtue of the law for the employer. Under Article 28 of the LCTT the term of protection of the employer's copyright is 70 years from making the database available to the public.
Additionally, under Article 93b of the LCRR, the maker of a database (irrespective of whether copyright protected or not, i.e. of whether the database is original or not) is granted a sui genesis right in the databases in the making of which he has invested. Pursuant to Article 93h of the law, that right is protected for 50 years, which start to run from 1 January of the year following the year in which the creation of the database is completed. Provided the database is made available to the public before expiry of the above term, the 50-year term starts to run from 1 January of the year in which the database is made available to the public.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the terms of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

According to Article 99, para. 3 of the LCRR, works of authors who are third country nationals, whose works are published for the first time in a third country, are protected for a term, determined by the respective foreign act, provided pursuant to it the term of protection is shorter than the term under the LCRR. Given that Bulgaria is party to the Berne Convention and that it had not availed of the option under Article 7 (8) of it to grant longer protection than that of the country of origin, the adoption of paragraph 3 of Article 99 did not create possibility for conflict with rights protected for longer term then that introduced in 2000.

Article 102, para. 1 of the LCRR provides that the rights of foreign performers, producers of phonograms, of radio and TV organisations and those of film producers, except for those who enjoy national treatment, are protected in accordance with the international agreements on copyright and related rights to which Bulgaria is a party. The term of protection of such works may not be longer than the term, provided for under the legislation of the country of which the respective right holder is a national, and may not exceed the terms laid down in the LCRR. Given that the addressed rule excludes right holders that enjoy national treatment in fulfilment of the international obligations of Bulgaria, provided non-Community nationals enjoy national treatment based on the international obligations undertaken by Bulgaria (Bulgaria is a member of the Rome Convention and of the WPPT), then the term of protection of such rights will be determined under the LCRR (50 years) and not under the national law, provided the latter determines shorter protection terms.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

Not all moral rights are perpetual. The moral rights of an author that are perpetual are set forth in Article 34 of the LCRR. These are (i) the right of the author to require that his name, pseudonym or identifying sign is placed upon each use of the work and (ii) the right of the author to require that the integrity of his work is preserved and to object to any changes in it as well as to other actions that may be prejudicial to his statutory interests or personal dignity.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

Most of the rules on the term of protection of copyright and related rights, as they are in their present version, were adopted in the year 2000. Then in 2002 some of them were slightly amended, with which they implemented more adequately the term protection directive. Finally, there was a very recent amendment of the LCRR (effective since 25 March 2011), with which among others were introduced some amendments aimed at full harmonisation with the Term Protection Directive (e.g. Article 34b of the LCRR was introduced, which implements Article 1, para. 4 of the Term Protection Directive; Article 102 of the LCRR was amended to include express rule that the term of protection of related rights calculated under the law of origin, may not exceed the terms provided under it; etc.)

Pursuant to §51 of the transitional provisions of the law of 2000, amending the rules on protection of copyright (the major revision on the terms of copyright protection, with which the protection term is extended from 50 years to 70 years after the death of the author; also film producers are granted relates rights), the LCRR shall apply to works which have been created before its entry into effect, provided the protection terms as per the amending law, have not expired yet. Similar provision was included in the amending act granting sui generis rights in databases (§38 of the transitional provisions of the amending act of 2002). The effect achieved based on those rules is that works the rights in which were expired /or did not existed previously, were granted protection in accordance with the newly adopted rules.
It shall be noted that already with the initial version of the LCRR (1993), that related rights of performers, producers of phonograms and radio and TV organizations were protected for 50 years.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

The Bulgarian copyright legislation does not differentiate the term of protection depending on the class of legal successor of the right holder.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

Similar exceptions are not introduced in the Bulgarian copyright legislation.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No.
4. Cyprus

Author: Tatiana - Eleni Synodinou

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

It is the Law 59/1976 about copyright protection.

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Law 59/1976 implemented the exceptions by following closely the letter of the Directive. More precisely:

a) Works of joint authorship. Article 5(2)(a) of Law 59/1976 states that the term shall be calculated from the death of the last surviving author.

b) Anonymous and pseudonymous works. Article 5(2)(b) of Law 59/1976 states that the term of protection shall run for seventy years after the work was lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity, the term of protection applicable shall be 70 years after the author's death.

c) Collective works. The concept of collective work does not exist as such in Cypriot copyright law. Since the law considers as neighbouring rights only the performer’s rights, all the other entrepreneurial contributions are protected through copyright law. Therefore, legal persons can be considered as creators of films, sound recordings and broadcastings (entrepreneurial copyright). Moreover, article 5(3)(a) of Law 59/1976 contains a special provision for works created by legal persons or state institutions. According to this provision, in case where the creator is a legal person or a state institution, the term of protection shall run for seventy years after the work is made available to the public.

The provision of article 1 par. 5 of the Directive was implemented by article 5(3)(b) of Law 59/1976. According to this provision, if the identity of the natural persons who either initially created a work which was later transferred to the employer on the basis of article 11 of the Law (this is the provision of Law 59/1976 about works created in the context of employment contract) or they contributed to the creation of the work is known and in case these natural persons who have created the work as such are identified as such in the versions of the work which are made available to the public, the term of protection shall be calculated from the date of publication of the work without prejudice to the rights of the natural persons.

d) Works published in parts, instalments, issues or episodes. The provision of article 1 par. 5 of the Directive was implemented by article 5(5) of Law 59/1976 as following: Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

Cypriot copyright law contains a definition only for works of joint authorship. The concepts of collective works and of compilations are neither included nor defined by Law 59/1976. According to article 2 of the Law 59/1976, a work of joint authorship is a work which is created thanks to the collaboration of two or more persons and in which the contributions of the several authors are inseparable.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works are considered as works of joint authorship if they met the criteria of the definition of the work of joint authorship. However this can be applied only to the music score and not to the lyrics. This is not stated explicitly in Law 59/1976, but it can be deducted from the definition of literary work in article 2. According to this definition, "literary work means, irrespective of literary quality, any of the following, or works similar thereto: (a) novels, stories and poetical works". Since the lyrics could be considered as similar to poetical works, they could be protected separately as literary works.

An example of work of joint-authorship could be a scientific article written by 2 or more persons where the contribution of each is not distinct and cannot be separated from the whole and the contribution of the other creators.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

Yes, a legal person can be designated as author. Cypriot copyright law recognizes entrepreneurial copyright for producers of films, sound recordings and broadcasting organizations. Moreover, in the case of a photograph, the
author of the photograph is the person who, at the time when the photograph is taken, is the owner of the material on which it is taken, and, therefore, a legal person could also be considered as the author of a photograph. The term of protection is not affected since as regards sound recordings and broadcastings it is calculated from the date of publication (50 years after the publication). The same can be applied in case the author of a photograph is considered a legal person in accordance with article 5 (3) (a) of Law 59/1976 which states that in case where the creator is a legal person or a state institution, the term of protection shall run for seventy years after the work is made available to the public.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

No, according to article 11 (2) a of Law 59/1976 the producer is considered as the initial author of a film, while for films which are created after 1994 the principal director is also considered as an author. Nevertheless, the term of protection is calculated by taking into consideration the death of other contributors without being necessary that the latter are designated by contract or by the law as co-authors of the work. More precisely, the table at the Annex of law 59/1976 states that the term of protection for cinematographic works shall expire seventy years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: (a) the producer, (b) the principal director, (c) the author of the screenplay, (d) the author of the dialogue and (e) the composer of music specifically created for use in the cinematographic or audiovisual work.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

There is no special provision in Law 59/1976 about copyright protection of official acts or documents and therefore there is not any relevant provision about the term of protection.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes. As it has already been mentioned the rights of producers of phonograms and of broadcasting organizations are not explicitly defined by Cypriot law as related rights. Nonetheless, the term of protection is calculated as if they were related rights according to article 3 of the Term Directive. More precisely:

a) Producers of phonograms. The point (iii) of the table which is annexed to article 5 (1) of Law 59/1976 states that the rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the phonogram is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

b) Broadcasting organizations. The point (iv) of the table which is annexed to article 5 (1) of Law 59/1976 states that the rights of broadcasting organizations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

c) Performers. Their rights are established by Cypriot copyright law as related rights. The term of protection is provided in point (vii) of the table which is annexed to article 5 (1) of Law 59/1976 as following: The rights of performers shall expire 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

d) Film producers. They are considered as authors of the film and not as beneficiaries of related rights. Therefore, the term of protection of the film is calculated starting from the date of their death (point (ii) of the table which is annexed to article 5 (1) of Law 59/1976). For the term of protection of films see also the answer to question 6.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes. According to article 3 (ix) of Law 59/1976 lists the previously unpublished works in the categories of copyright protected works. Moreover, article 7 D of the Law states that any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The table which is annexed to article 5 (1) of Law 59/1976 states that the term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public (point (v) of the table).

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No. There is no relevant provision.
11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

There is no distinction in Cypriot copyright law between original and unoriginal photographs. It shall be taken into consideration that the threshold for copyright protection is law in Cypriot copyright law since it is considered as original work a work that has not been copied. Therefore, the general rules of article 5 of Law 59/1976 for the term of protection apply (expiration after seventy years starting from the author’s death or in case the author is a legal person seventy years starting from the publication of the photograph).

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

The term of protection for original databases is 70 years after the author’s death. This stated to the point (i) of the table which is annexed to article 5 (1) of Law 59/1976. The term of protection for unoriginal databases which are protected by the database sui generis right is 15 years from the completion of the database. In the case of a database which is made available to the public in whatever manner before expiry of the period of fifteen years, the term of protection by that right shall expire fifteen years from the first of January of the year following the date when the database was first made available to the public. Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection. This is stated to the point (vi) of the table which is annexed to article 5 (1) of Law 59/1976.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No. There are no relevant provisions.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

It was implemented by article 6 of Law 59/1976. According to article 6 (2) (a), where the country of origin of a work, within the meaning of the Berne Convention, is a third country, and the author of the work is not a Community national, the term of protection granted by the Member States shall expire on the date of expiry of the protection granted in the country of origin of the work, but may not exceed the term laid down by article 5 of Law 59/1976. According to article 6 (2) (b), the term of protection shall expire no later than the date of expiry of the protection granted in the country of which the rightholder is a national and may not exceed the term laid down in Article 5. International agreements between the Republic of Cyprus and other countries which provide the contrary on the term of protection by copyright or related rights remain valid.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

No, they are not perpetual. Cypriot copyright law establishes a limited protection for moral rights and provides only for the right of paternity and the right of integrity according to the article 6 bis of the Berne Convention (article ). Moral rights exist only for the lifetime of the author. The relevant provision is article 7 (4) of Law 59/1976.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

It was modified by Law 128 (I) 2002. There were no transitional provisions and there were not any cases of previously expired rights being resuscitated.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?
No, there is no similar provision in Cypriot copyright law.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No there are not any similar additional exceptions in Cypriot copyright law.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No. There is not such provision in Cypriot copyright law.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

Article 6 (4) of Law 59/1976 states that copyright over Euro bank-notes and coins is not subject to any time limitation. There are not any other noteworthy divergences.
**5. Czech Republic**

1. How have the exceptions of Article 1 of the Term Directive (Directive 2006/116/EC) in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Please cite the relevant provisions of your national act.

Copyright law in the Czech Republic is governed by the **Czech Copyright Act No. 121/2000 Coll.** (last amendment is under No. 168/2008 Coll.), which has been prepared with clear intention to bring Czech legal order in line with the EU acquis communautaire, in this particular field, ahead of the country accession to the EU. This Act not only fully transformed the Term Protection Directive, but also incorporated the majority of provisions from the Information Society Directive, which was not yet approved at that moment. Previously Czech copyright law was governed by the Czech **Copyright Act No. 35/1965 Coll.**, which protected the copyright works for 50 years post mortem auctoris.

All exceptions of Article 1 have been implemented in Czech national legislation, in the following way:

**Works of joint authorship (Art. 27 par. 2):**
If the work has been created as the work of joint authors, the period of duration of economic rights shall be calculated from the death of the last surviving author. anonymous and pseudonymous works, collective works (Art. 27 par. 3): Economic rights to an anonymous and pseudonymous work shall run for 70 years from the time when the work was lawfully made public. Where the real name of the author of the anonymous or pseudonymous work is commonly known, or if the author declares his identity in public (Art. 7 paragraph (2)) during the course of the term pursuant to the first clause, the duration of economic rights to such work shall be governed by paragraph (1) (70 years post mortem auctoris, see below, my addition), and in the case of joint authors also by paragraph (2) (see above, my addition). Provisions of this paragraph should also be used for a collective work (Art. 59), with the exceptions of the cases in which the authors, who have created the work as such, are identified as the authors by the work or on the work made available to the public; in such cases the economic rights to the collective work should be governed by the paragraph 1 or paragraph 2.

**Works published in parts, instalments, issues or episodes (Art. 27 par 6):** (just to note, the Czech Copyright Act does not mention the instalments, which is also the case for the official Czech translation of the Term Directive. The reason for this is most likely attributed to difficulty in distinguishing the meaning of this term from other terms used in Czech language): If making public of a work is decisive for the start of the period of duration of economic rights, and the work is being made public over a certain period in volumes, parts, issues or episodes, the period of duration of economic rights shall run for each such item of the work separately.

**Main provision concerning the calculation of the term of protection can be found in the Art. 27 par 1, respectively par 7:**
Unless stipulated otherwise, economic rights shall run for the life of the author and for 70 years after his death. The period of duration of economic rights shall be calculated always from the first day of the year following the year in which the event decisive for its calculation occurred.

2. Is there a distinction made between works of joint authorship, collective works and compilations in your national legislation? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? Are co-written musical works considered to be works of joint authorship or collective works? Please cite the relevant provisions of your national act.

There is a distinction drawn between all these categories, however the term of protection is calculated according to the general rule – 70 years post mortem auctoris (from the death of the last surviving author in the case of works of joint authorship; concerning the collective works either the authors are identified and then 70 years post mortem auctoris rule applies or the term of protection is 70 years from the time when the collective work was lawfully made public; if making available to the public is decisive, then calculation of the term of protection for compilations is governed in the same way as for the works published in parts etc.). Concerning co-written musical works there is no clear provision. The authors of the lyrics and music will be the individual authors and have independent terms of protection, and jointly written lyrics (or music) will be usually the work of joint authorship.

**Works of joint authorship (Art. 8 par 1):**
The copyright to a work which has been produced until the time of the completion of the work as a single work by the creative activity of two or more authors (work by joint authors) shall belong to all the joint authors jointly and inseparably. The establishment of a work by joint authors shall not be prejudiced if the creative contributions to the work by the individual joint authors can be distinguished, unless such contributions are capable of being used independently.

**Collective works (Art. 59):**
A collective work shall mean a work created with the participation of more authors, and which is being created at the initiative and under the management of a natural person or legal entity and made available to the public under that person’s or entity’s name under the condition that the contributions involved in such work shall not be capable of independent use.
par 2) Collective works shall be deemed employee works pursuant to Article 58 also in the case when they have been created to order; the person who has made the order shall in such case be considered the employer. The provision of Article 61 shall not apply to these works. **par 3) An audiovisual work and works used audiovisually are not collective work. Compilations (Art. 2 par 5):**

A collection like a journal, encyclopaedia, anthology, exhibition, or other collection of independent works or other elements that by reason of their selection and of the arrangement of the content fulfill the conditions of the paragraph 1 (basic originality criterion, my addition), is a work of collection.

3. Are cinematographic or audiovisual works defined in your national legislation? Are other co-authors assigned to such a work, other than the principle director in accordance with Article 2 of the Term Directive? In whom is copyright in such a work vested in your national legislation?

No, audiovisual works are used as a general term (scientific literature recognises also cinematographic works). The principal director is the only author of the audiovisual work (Art. 63), but there are also other authors to the works utilized audiovisually (Art. 64). The term of protection is governed by the **Art. 27 par 5.**

**Audiovisual Work - Definition - Art. 62 par 1**

An audiovisual work shall mean a work created by the arrangement of works used audiovisually, adapted or unadapted, constituted of a number of recorded interlinked images evoking the impression of movement, accompanied by sound or mute, perceivable by sight and, if accompanied by sound, perceivable by hearing.

**The Author of the Audiovisual Work - Art. 63 par 1**

The author of the audiovisual work is the director of the work. This shall not prejudice the rights of authors of works used audiovisually.

**Term of protection - Art. 27 par 5**

The period of duration of economic rights to an audiovisual work shall be calculated from the death of the last surviving of the following persons: the director, the author of screenplay, the author of the dialogue and the composer of the music specifically created for use in the audiovisual work.

4. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? Please cite the relevant provisions of your national act.

Term of protection for the neighbouring rights is by general rule 50 years (in addition to the Art. 3 of the Term Directive, Art. 87 of the Czech Copyright Act gives the publisher the right to a remuneration in connection with the making of a reproduction for the private use of a work published by him (for the duration of 50 years from the publication of the work)). There are some slight differences between the directive and the Czech act, e.g. the use of the terms „published“, „made public“, „communicated to the public“, and Art. 3 par 2 part 2 subparagraph 2 was not transformed.

**Duration of Economic Rights of the Performer (Art. 73):**

The economic rights of the performer shall run for 50 years from the creation of the performance. Where however a fixation of such performance is made public during this period, the rights of the performer shall not expire until 50 years from the time when such fixation was made public.

**Duration of the Right of the Phonogram Producer (Art. 77):**

The right of the phonogram producer shall run for 50 years from the making of the phonogram. Where however a phonogram is lawfully made public during this period, the right of the producer shall not expire until 50 years from the date when such phonogram was made public.

**Duration of the Right of the Producer of the Audiovisual Fixation (Art. 81):**

The right of the producer of the audiovisual fixation shall run for 50 years from its first fixation. Where however the audiovisual fixation has been lawfully made public during this period, the right of the producer of the audiovisual fixation shall not expire until after 50 years from the date when the audiovisual fixation was made public.

**Duration of the Right of the Broadcaster (Art. 85):**

The right of the broadcaster shall run for 50 years from the first broadcast.

5. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? Please cite the relevant provisions of your national act.

Yes, the Art. 4 has been implemented in the **Art. 28 par 2 and par 3.**

**par 2** Whoever first makes public a work to which the period of protection of economic rights has already expired shall be entitled to exclusive economic rights to the work thus made public as would have been enjoyed by the author of the work if the economic rights to the work were still in effect.

**par 3** The right pursuant to paragraph (2) shall run for 25 years from the making public of the work. The provisions of Article 27 paragraph (7) shall apply analogously.

**Article 27 par 7**

The period of duration of economic rights shall be calculated always from the first day of the year following the year in which the event decisive for its calculation occurred.
6. Has Article 5 of the Term Directive on critical and scientific publications been implemented in your national legislation and, if so, what is the term of protection? Please cite the relevant provisions of your national act.

The Article 5 of the Term Directive has no implementation into the Czech Copyright Act.

7. Has Article 6 of the Term Directive on the protection of photographs been implemented in your national legislation? Are non-original photographs protected under your national legislation in addition to original ones and if so, what is the term of protection? Please cite the relevant provisions of your national act.

The Article 6 has been implemented to the Art. 2 Par. 2 along the same provisions for the computer programs and the databases, i.e. photographs, which are original (meaning they are the author’s own intellectual creation) are protected in the same way as the standard works, which are protected according to the Art. 2 Par. 1 if they are the unique outcome of the creative activity of the author. The term of protection of the photographs is the same with the standard works. The other photographs, which are not the author’s own intellectual creation, are not protected.

In addition to the Term Directive there is reference not only to the photographs, but also explicitly to the works expressed by the technique similar to the photographs, which is protected in the same way as the photographs.

8. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Please cite the relevant provisions of your national act. Do you know of any international obligations undertaken by your country prior to the adoption of the Term Directive granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

To my knowledge, according to the interpretation rules of the Art. 107 there is no longer term of protection for the foreign works in the Czech Republic on the basis of any international obligations of the Czech Republic.

Art. 107 par 2
The provisions of this Act shall apply to the works and performances of foreign nationals and people without nationality in accordance with the international treaties binding on the Czech Republic or, in the absence of such treaty, where reciprocity is assured.

Art. 107 par 4
(4) Copyright in the works of foreign nationals shall not subsist for longer than copyright in the country of origin of the work.11

9. Are moral rights in your country perpetual? (Please see Article 9 Term Directive.) Please cite the relevant provisions of your national act.

No, the moral rights end with the death of the author (Art. 11 par 4), but there is post-mortem protection of some moral rights (Art. 11 par 5).

Art. 11 par 4
The author may not waive his personal rights; these rights are non-transferable and become extinct on death of the author. The provision of paragraph (5) shall not be affected.

Art. 11 par 5
(5) After the death of the author no other person may claim authorship of the work; the work may be used only in a manner which does not depreciate its value and, unless the work is an anonymous work, the name of the author, if known, must be indicated. Protection may be claimed by any of the author’s kin; they shall maintain this authorisation even after the passage of the term of economic rights to copyright. Such protection may at any time be claimed also by the legal entity associating authors or by the relevant collective administrator of rights in accordance with this Act (Art. 97).

10. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights over works in which copyright or related rights subsist being resuscitated? If so, for how long? Did your national act take advantage of the latitude as to cinematographic or audiovisual works provided by Article 10 (4) Term Directive? Please cite the relevant provisions of your national act.

The majority of provisions made by the Term Directive was implemented by 1 December 2000, although some minor changes were implemented via amendments coming in force on the different days. The previously expired rights have been resuscitated and the transition period lasted to 1 December 2002. The Art. 10 par 4 was not used in the Czech Republic.

Art. 106 par 3
The period of duration of economic rights shall be governed by this Act also where the term started before this Act came into effect. Where the term of duration of these rights has expired before the date on which this Act comes into effect, the term shall be renewed as from the date on which this Act comes into effect for the remaining period. Reproductions of items of protection for which the term of duration of economic rights is being renewed, lawfully acquired before the date of the coming into effect of this Act, may however continue to be freely disseminated for a further two years after this Act comes into effect.
11. Does the term of protection vary according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/the State via escheat etc.) in your national jurisdiction? If so, could you please cite the relevant provisions of your national act?

No, the term of protection is the same irrespective of the beneficiaries such as heirs, the State escheat or in the case of dissolution of legal entity without any legal successor, etc.

**Art. 26 par 2**

Economic rights are inheritable. Where the economic rights to the work are inherited by more than one heir, their mutual relations to the work shall be governed by Article 8 paragraphs (3) and (4) analogously. If the inheritance escheats or fall to the state, the economic rights shall be exercised by the State Fund of Culture of the Czech Republic in its own name, and, in the case of audiovisual works, by the State Fund of the Czech Republic for Promotion and Development of Czech Cinematography. The incomes of the state from the exercise of the economic rights exercised by the mentioned state funds shall be the revenue of these state funds.

12. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Please cite the relevant provisions of your national act.

No term of protection longer than that prescribed by the Term Directive was provided under the Czech Copyright Act. Czech legislation was amended in a way to affect the works created before 1 July 1994.

13. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

There are no significant differences between Czech Copyright Act and the relevant Term Directive other than mentioned above.
6. Denmark

Author: Thomas Riis

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

Consolidated Act on Copyright no. 202 of 27 February 2010

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Sect. 63, para. 1 of the Copyright Act:
“The copyright in a joint work shall last for 70 years after the year of death of the last surviving author. ….”

Sect. 63, para. 2 of the Copyright Act:
“Where a work is made public without indication of the author's name, generally known pseudonym or signature, the copyright shall last for 70 years after the year in which the work was made public. Where a work consists of parts, volumes, instalments, issues or episodes a separate term of protection shall run for each item.”

Sect. 63, para. 4 of the Copyright Act:
“Copyright in a work of unknown authorship that has not been made public shall last 70 years after the end of the year in which the work was created.”

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

Joint works are defined in Sect. 6 of the Copyright Act in the following way:
“If a work has two or more authors, without the individual contributions being separable as independent works, the copyright in the work shall be held jointly. Each of the authors, however, may bring an action for infringement.”

If the individual contributions are separable as independent works the rule on 70 years p.m.a. applies to each work.

Compilations are defined in Sect. 5 in the following way:
“A person who, by combining works or parts of works, creates a composite literary or artistic work, shall have copyright therein, but the right shall be without prejudice to the rights in the individual works.”

In respect of a compilation as such as well as each of the individual works in the compilation the rule on 70 years p.m.a. applies.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

A musical composition and the lyrics for the composition are considered as being separable as independent works.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

No.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Sect. 63, para. 1 of the Copyright Act:
“…. With regard to cinematographic works the copyright, however, shall last for 70 years after the year of death of the last of the following persons to survive:
(i) the principal director;
(ii) the author of the script;
(iii) the author of the dialogue; and
(iv) the composer of music specifically created for use in the cinematographic work
7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No, cf. Sect 9 of the Copyright Act:
“(1) Acts, administrative orders, legal decisions and similar official documents are not subject to copyright.
(2) The provision of subsection (1) shall not apply to works appearing as independent contributions in the documents mentioned in subsection (1). Such works may, however, be reproduced in connection with the document. The right to further use shall be subject to the provisions otherwise in force.”

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Performing artists:
“Where a performance has been recorded…, it must not without the consent of the performing artist be copied or be made available to the public until 50 years after the end of the year in which the performance took place. However, if a recording of the performance is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication, or the first such communication, whichever is the earlier.” (Sect. 65, para. 2 of the Copyright Act.)

Producers of sound recordings:
“Sound recordings may not without the consent of the producer be copied or made available to the public until 50 years have elapsed after the end of the year in which the recording was made. If a sound recording is published during this period the protection shall, however, last until 50 years have elapsed after the end of the year of the first publication. If a sound recording is not published but is made public in any other manner within the period mentioned in the first sentence, the protection shall, however, last until 50 years have elapsed after the end of the year in which it was made public.” (Sect. 66, para. 1 of the Copyright Act.)

Producers of Recordings of Moving Pictures:
“Recordings of moving pictures may not without the consent of the producer be copied or made available to the public until 50 years have elapsed after the end of the year in which the recording was made. If a recording of a moving picture is published or made public during this period the protection shall, however, last until 50 years have elapsed after the end of the year in which it was first published or made public, whichever is the earlier.” (Sect. 67, para. 1 of the Copyright Act.)

Broadcasters:
“Where a broadcast is photographed or recorded …, it must not without the consent of the broadcaster be copied or made available to the public until 50 years have elapsed after the end of the year in which the broadcast took place.” (Sect. 69, para. 2 of the Copyright Act.)

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, cf. Sect. 64 of the Copyright Act:
“Where a work has not been published previously, the person who lawfully makes the work public or publishes it for the first time after the expiry of copyright protection, shall have rights in the work equivalent to the economic rights attributed by the Act to the person creating a literary or artistic work. This protection shall last for 25 years after the end of the year in which the work was made public or published.”

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

Original photographs are protected 70 years p.m.a., cf. Sect. 63, para. 1, compared with Sect. 1 of the Act.

Non-original photographs are protected until 50 years have elapsed from the end of the year in which the picture was taken, cf. Sect. 70, para. 2 of the Act.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.
Original databases are protected 70 years p.m.a., cf. Sect. 63, para. 1, compared with Sects. 1 and 5 of the Act.

Unoriginal databases are protected until 15 years have elapsed after the end of the year in which the product was produced. If a product of the said nature is made available to the public within this period of time, the protection shall, however, subsist until 15 years have elapsed after the end of the year in which the product was made available to the public for the first time, cf. Sect. 71, para. 4 of the Act.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

The definition of unoriginal databases in Sect. 71 is broader than the definition of a databases in the Database Directive and it covers also a catalogue and a table or the like, in which a great number of items of information has been compiled.

Otherwise the Act does not contain provisions of the sort referred to in question 13.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Copyright protection vis-à-vis third countries is governed by the provisions of Regulation no. 218 of 9 March 2010 on the application of the act on copyright in relation to other countries.

To my best knowledge, prior to the adoption of the Term Directive, Denmark had not accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2).

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

In principle, parts of the moral rights are perpetual. In Sect. 75 of the Act it is thus stipulated that:

“Although the copyright has expired a literary or artistic work may not be altered or made available to the public contrary to section 3(1) and (2) [the ordinary provision on moral rights] if cultural interests are thereby violated.”

Normally, it is assumed that Sect. 75 has no practical significance.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The Term Directive was implemented by Act No. 396 of 14 June 1995.

A number of previously expired rights were resuscitated – some of them for additional 20 years.

The Copyright Act did not specify whose rights were being revived.

Issues relating to resuscitation have to be dealt with by Sect. 90 of the Act:

“(1) This Act shall apply also to works and performances and productions, etc., made before the coming into force of this Act.

(2) This Act shall not apply to acts of exploitation concluded or rights acquired before the coming into force of this Act. Copies of works or of performances or productions etc. can still be distributed to the public and be exhibited in public if they have been lawfully made at a time when such distribution or exhibition was permitted. The provisions of section 19(2) and (3) [the rights of rental and lending of various works are not exhausted] shall, however, always apply to rental and lending carried out after the coming into force of this Act.

(3) If by application of the new provisions the term of protection for a work or a performance or a production etc. shall become shorter than according to the previous provisions those provisions shall apply. ... ”

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other related/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No.
18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No.
7. Estonia

Author: Mag. iur. Elise Vasamäe

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

Copyright Act (hereinafter referred to as the CA).

Legal source: RT I, 06.01.2011, 34; available at https://www.riigiteataja.ee/akt/106012011034

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

CA Article 38(1) provides that the term of protection of copyright shall be the life of the author and seventy years after his or her death, irrespective of the date when the work is lawfully made available to the public, except in the cases prescribed in Articles 39 – 42 of CA.

CA Article 38(21) stipulates that where the country of origin of a work, within the meaning of subsection 4 of Article 5 of the Berne Convention on Literary and Artistic Works, is a third country, and the author of the work is not a citizen or permanent resident of the Republic of Estonia, the term of protection of copyright shall run within a period prescribed by the law of the country of origin but may not exceed the term specified in subsection (1).

According to the Article 39 of CA the term of protection of copyright in a work created by two or more persons as a result of their joint creative activity shall be the life of the last surviving author and seventy years after his or her death.

Article 40 of CA regulates the term of protection of copyright in anonymous or pseudonymous works. It says that in the case of anonymous or pseudonymous works, the term of protection of copyright shall run for seventy years after the work is lawfully made available to the public. If the author of the work discloses his identity during the above-mentioned period or leaves no doubt as to the connection between the authorship of the work and the person who created the work, the provisions of Articles 38 and 39 apply.

According to Article 41 of CA the term of protection of copyright in a collective work (CA Article 31) or work created in the execution of duties (CA § 32) shall run for seventy years after the work is lawfully made available to the public. The term of protection of copyright in an audiovisual work (CA Article 33) shall expire seventy years after the death of the last surviving author (director, script writer, author of dialogue, author of a musical work specifically created for use in the audiovisual work). If a work specified in subsection (1) of this section is not made available to the public seventy years after the creation thereof, the term of protection of copyright shall expire seventy years after the creation of the work.

It has been also laid down in Article 41 of CA that where a work is published as a serial (volumes, parts, issues or instalments, etc.) and the term of protection of copyright runs from the time when the work was lawfully made available to the public, the term of protection for each instalment shall expire seventy years after the time when the instalment is lawfully made available to the public.

CA Article 41(4) provides that the term of protection of copyright in independent works included in a collective work, a work created in the execution of duties or in an audiovisual work which have not been made available to the public anonymously or under a pseudonym shall expire within the term provided for in subsection 38 (1) of this CA.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

Article 30(1) of CA provides that copyright in a work created by two or more persons as a result of their joint creative activity shall belong jointly to the authors of the work.

According to Article 30(2) a work created as a result of joint creative activity may constitute an indivisible whole (joint authorship) or consist of parts each of which has independent meaning of its own (co-authorship). A part of a work is deemed to have independent meaning if it can be used independently of other parts of the work.
It follows from the foregoing that according to Estonian legislation the joint authorship can be either a joint authorship or co-authorship, the latter presupposes that the contributions of several authors are separable.

**Article 30(3) of CA** states that each co-author of a work shall enjoy copyright in the part of the work with independent meaning created by him or her and the co-author may use that part of the work independently. Such use shall not prejudice the interests of other co-authors or contradict the interests of joint use of the co-authors of the work.

According to **Article 31(1) of CA** a collective work is a work which consists of contributions of different authors which are united into an integral whole by a natural or a legal person on the initiative and under the management of this person and which is published under the name of this natural or legal person (works of reference, collections of scientific works, newspapers, journals and other periodicals or serials, etc.).

Copyright in a collective work shall belong to the person on whose initiative and under whose management the work was created and under whose name it was published unless otherwise prescribed by contract.

**Article 34(1) of CA** provides that a person who creates a collection as a result of his or her creative activity by selecting or arranging the economic (compiler) shall enjoy copyright in this collection.

Regarding the term of protection for the works referred to above please see answer to question 2.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Estonian CA does not provide for any special regulation regarding the co-written musical works. This means that co-written musical works can be considered either works of joint authorship or co-authorship depending whether a part of a work has independent meaning, i.e. it can be used independently of other parts of the work.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

In Estonia only the physical person who has created the work can be the original author of a work of copyright. Legal person who has obtained economical rights from the author under the agreement or is deemed to be the holder of copyright under the law is called right holder.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

**CA Article 33(1)** provides that audiovisual works are all works which consist of series of related images whether or not accompanied by sound and which are intended to be demonstrated using corresponding technical means (cinematographic films, television films, video films, etc.).

**CA Article 33(2)** lays down that copyright in an audiovisual work shall belong to its author or joint or co-authors - the director, the script writer, the author of dialogue, the author of the musical work specifically created for use in the audiovisual work, the cameraman and the designer. The economic rights of the director, the script writer, the author of dialogue, the cameraman and the designer shall transfer to the producer of the work unless otherwise prescribed by contract. The economic rights of the author of the musical work used in the audiovisual work shall not transfer to the producer regardless of the fact whether or not the work was specifically created for use in the audiovisual work.

**Article 33(5) of CA** says that directors, script writers, composers and authors of script outlines, dialogue and the announcer’s text, designers, cameramen, choreographers, sound recordists and other persons who participate in the creation of an audiovisual work shall enjoy copyright in their work which constitutes a part with independent meaning of the audiovisual work and which can be used independently of the work as a whole. Economic rights with regard to such works may be exercised independently unless otherwise provided by contract on the condition that such use shall not prejudice the interests of using the work as a whole.

**CA Article 41(11)** provides that the term of protection of copyright in an audiovisual work (§ 33) shall expire seventy years after the death of the last surviving author (director, script writer, author of dialogue, author of a musical work specifically created for use in the audiovisual work).

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?
Official documents (legislation and administrative documents) are according to Article 5 of CA not protected in Estonia.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, Article 3 of the Term Directive on the duration of related rights has been implemented in Estonian legislation.

According to Article 74(1) of CA (1) the rights of performers, phonogram producers, producer of the first fixation of a film and broadcasting organisation shall not expire before the end of a period of fifty years:
1) for the performer, as of the first performance of a work. If a recording of the performance is lawfully published or lawfully communicated to the public within this period, the rights of the performer shall expire in fifty years as of the date of such publication or communication to the public, whichever is the earliest;
2) for the producer of phonograms, as of the first fixation of a phonogram. If a recording of the phonogram is lawfully published within this period, the rights of the producer of phonograms shall expire in fifty years as of the date of the first lawful publication. If, during the term specified in the first sentence, no lawful publication has occurred and the phonogram has been lawfully communicated to the public, the specified rights shall expire in fifty years as of the date of such publication or communication to the public, whichever is the earliest;
3) for the broadcasting organisation, as of the first transmission of a broadcast, regardless of whether the broadcast is transmitted or retransmitted by wire or over the air, including by cable network or satellite;
4) for the producer of the first fixation of a film, as of the first fixation of the film. If the film is lawfully published or lawfully communicated to the public within this period, the rights of the producer of the first fixation shall expire in fifty years as of the date of such publication or communication to the public, whichever is the earliest.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, Article 4 of the Term Directive on the protection of previously unpublished works has been implemented in Estonian legislation.

Article 741(1) provides that a person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work shall benefit from a protection equivalent to the economic rights of the author (§ 13), within twenty-five years from the time when the work was first published or communicated to the public.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, critical and scientific publications of works which have come into the public domain are protected under Estonian legislation.

Article 741(2) stipulates that a person who publishes a critical or scientific publication of a work unprotected by copyright has rights to the publication equivalent to the economic rights of an author (§ 13), within thirty years from the time when the work was first published.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

No, non-original photographs are not protected under Estonian legislation. Photographic works are protected pursuant to general principles of copyright.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

Original databases are protected exactly the same way as other copyrightable works. According to Article 38 of CA the term of protection of copyright shall be the life of the author and seventy years after his or her death, irrespective of the date when the work is lawfully made available to the public.

Article 757(2) of CA provides that the term of protection of the rights of the maker of a database shall expire in fifteen years from the first of January of the year following the date when the database was completed.

Article 757(3) of CA stipulates that if a database is made available to the public in whatever manner within the period provided for in subsection (2) of this section, the term of protection of the rights of the maker of the
database shall expire in fifteen years from the first of January of the year following the date when the database was first made available to the public.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No, there are not any other categories of works given a different term of protection in your country (e.g. works of applied art) nor any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Article 92(1) provides that where the country of origin of a work, within the meaning of subsection 4 of Article 5 of the Berne Convention, is a third country, and the author of the work is not a citizen of a Member State of the European Union, the term of protection of copyright in the European Union shall expire within a period prescribed by the law of the country of origin of the work, but may not exceed the term specified in subsection 38 (1).

Article 92(2) provides that the terms of protection prescribed in Article 74 of CA also apply in respect of holders of related rights who are not citizens of a Member State of the European Union, provided that the Member States grant them protection. Such rights shall expire within a period prescribed by the law of the Member State of which the right holder is a citizen, but may not exceed the term prescribed in Article 74, unless otherwise prescribed by an international agreement.

Article 92(3) lays down that the terms of protection provided for in Chapter VI, and Articles 74 and 757 of CA apply to all works and objects of related rights which are protected in at least one Member State of the European Union.

This regulation cited above came into force on 1st of May 2004 when Estonia joined the EU.

Prior to the adoption of the Term Directive Estonia had not accepted any international obligations granting a longer term of protection to non-Community nationals than foreseen by Article 7(1) and (2).

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

In Estonia are perpetual some legal rights granted to the author by law – authorship of the work, the name of the author and the honour and reputation of the author shall be protected without the term.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

Estonian CA was in conformity with the regulation of the Term Directive already before the adoption of that directive. No transitional provisions have been introduced.

The initial text of Estonian CA that was adopted in 1992 provided for the 50 years term of protection for authors. By the Act on the Amendment of the Copyright Act and Related Acts of 9th of December 1999 the term of protection was prolonged to 70 years. The term of protection for performers, phonogram producers and broadcasting organisations were 50 years starting from the adoption of the initial Estonian CA.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No.
19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No. According to Article 5 of CA works of folklore are regarded as the results of intellectual activities to which CA does not apply. In Estonia no compulsory license fee system is applied on works of folklore.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No.
8. Finland

Author: Herkko Hietanen


1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

CHAPTER 4
Term of Copyright

Section 43 (22.12.1995/1654)
Copyright shall subsist until seventy years have elapsed from the year of the author's death or, in the case of a work referred to in section 6, from the year of death of the last surviving author. Copyright in a cinematographic work shall subsist until seventy years have elapsed from the year of the death of the last of the following to survive: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic work.

Section 44a (22.12.1995/1654)
Anyone who for the first time publishes or makes public a previously unpublished work or a work not made public, which has been protected under Finnish law and the protection of which has expired, shall obtain a right in the work as provided in section 2 of this Act. The right shall subsist until twenty-five years have elapsed from the year in which the work was published or made public.

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Section 44 (22.12.1995/1654)

(1) The copyright in a work made public without mention of the author's name or generally known pseudonym or pen name shall subsist until the end of the seventieth year after the year in which it was made public. If the work is published in parts, the duration of copyright shall be calculated separately for each part.

(2) If the identity of the author is disclosed during the period referred to in subsection 1, the provisions of section 43 shall apply.

(3) The copyright in a work not made public, whose author is unknown, shall subsist until seventy years have elapsed from the year in which the work was created.

Section 7

(1) The person whose name or generally known pseudonym or pen name is indicated in the usual manner on the copies of a work or when the work is made available to the public, shall be deemed to be the author, unless otherwise demonstrated.

(2) If a work is published without the name of the author being indicated in the manner described in subsection 1, the editor, if he is named, and otherwise the publisher, shall represent the author until his name is indicated in a new edition of the work or notified to the competent Ministry.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction?

Yes

If so, what is the definition for each of these categories and how is the term of protection for such works calculated?

Section 4

(1) A person who translates or adapts a work or converts it into some other literary or artistic form shall have copyright in the work in the new form, but shall not have the right to control it in a manner which infringes the copyright in the original work.

(2) If a person, in free connection with a work, has created a new and independent work, his copyright shall not be subject to the right in the original work.

Section 5
A person who, by combining works or parts of works, creates a literary or artistic work of compilation shall have copyright therein, but his right shall be without prejudice to the rights in the individual works.

**Section 6**

If a work has two or more authors whose contributions do not constitute independent works, the copyright shall belong to the authors jointly. However, each of them is entitled to bring an action for infringement.

In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

See section 6 above.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Lyrics are separate from compositions, but if there are two composers working with a composition, then the composition would most likely be a joint work.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

No. Original author is always a natural person.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

**Section 43 (22.12.1995/1654)**

Copyright shall subsist until seventy years have elapsed from the year of the author's death or, in the case of a work referred to in section 6, from the year of death of the last surviving author. Copyright in a cinematographic work shall subsist until seventy years have elapsed from the year of the death of the last of the following to survive: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic work.

7. Are official documents protected by copyright in your country?

Mostly no.

If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

9§

Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes.

50 years.

45§-46§ and 48§

8. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes.

25 years.

44a§

9. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?
10. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

Yes

50 years

49a§

11. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

15 years.

49§.

12. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No.

13. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

63§-65§ may be applicable.

Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Finland has implemented term extensions as one the first countries. No such problems

14. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

Yes.

3§

15. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

Finland did not have to change its copyright act because of the directive.

16. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No

17. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No

18. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that
affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No.

19. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No.

20. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

-
9. France

1. Duration of authors’ rights:

The exceptions of Article 1 of the Term Directive have been implemented in the code de la propriété intellectuelle (CPI). As a preliminary remark, it should be mentioned that all the terms are calculated as from the 1st January of the year following the event which give rise to them (as provided by Article 8 of the Term Directive).

According to Article L. 123-1, 2nd indent, of the CPI, the authors’ rights shall run for the author’s life and for 70 years after his death or 70 years post mortem auctoris (p.m.a.).

In case of a work of joint authorship, under Article L. 123-2, 1st indent, of the CPI, the term is calculated from the death of the last surviving author.

In case of pseudonymous, anonymous and collective works, under Article L. 123-3, 1st indent of the CPI, the term shall run for 70 years after the publication of the work.

*When the pseudonymous, anonymous or collective works is published in instalments, the term shall run for 70 years following the date on which each instalment was published (Article L. 123-3, 2nd indent of the CPI). N.B.: The CPI only provides for publication in instalments. It does not refer to publication in parts, issues or episodes.

*When the author of an anonymous or pseudonymous work discloses his identity, the term of protection shall run for 70 years after the author’s death or the death of the last surviving author (in case of joint authorship), as provided by Article L. 123-3, 3rd indent of the CPI).

*Under Article L. 123-3, 4th indent of the CPI, pseudonymous, anonymous and collective works, will be protected for a period of 70 years following the year of their creation. However, according Article L. 123-3, 5th indent of the CPI, when the pseudonymous, anonymous or collective work is disclosed to the public after this period, it shall benefit from a protection of 25 years from the date of publication.

2. Joint authorships and collective works

In the CPI, there is a distinction between works of joint authorship and collective works.

Article L.113-2, 1st indent of the CPI, defines a work of joint authorship as a work in the creation of which more than one natural persons has participated. The term shall run from the death of the last surviving author and lasts for 70 years (under Article L. 123-2, 1st indent of the CPI, see answer to Q.1).

Article L. 113-2, 3rd indent of the CPI, defines a collective work as a work created at the initiative of a natural or legal person who edits, publishes and discloses it under his direction and name and in which the personal contributions of the various authors who participated in its production are merged in the overall work for which they were conceived, without being able to attribute to each author a separate right in the work as created. The term of protection shall run from the date of publication and lasts for 70 years (under Article L. 123-3 of the CPI, see answer to Q. 1).

The CPI does not provide for the example of co-written musical works but provides for specific rules regarding audiovisual works (including cinematographic works) and radio works (oeuvre radiophonique).

Under Article L. 112-2 (6º) of the CPI, audiovisual works are defined as cinematographic works and other works consisting of sequences of moving images, with or without sounds. Audiovisual works are considered as works of joint authorship (Article L. 113-7 of the CPI). Under Article L.123-2, 2nd indent, the term of protection shall run for 70 years after the death of the last surviving joint author: author of the screenplay, author of the written text, author of musical compositions with or without text specifically created for the audiovisual work and the principal director.

Under Article L. 113-8 of the CPI, authorship of a radio work shall belong to the natural person or persons who carried out the intellectual creation of the work. As a consequence, the general rules applicable to a work of joint authorship should apply to radio works (Article L.113-2, 1st indent of the CPI, see above).

3. Audiovisual works

See answer to Q.2. Audiovisual works (including cinematographic works) are defined in French law. Under Article L.113-7 of the CPI, are presumed co-authors of an audiovisual work the following persons:

- author of the screenplay;
- author of the adaptation;
- author of the written text;
Right of economic exploitation is vested in the producer of the audiovisual work.

4. Duration of related rights:

The duration of related rights has been implemented in Article L. 211-4 of the CPI. Under this article, the term of protection of related rights shall expire 50 years after the date of performance (performers), first fixation of a sequence of sounds (phonogram producer), first fixation of images with or without sound (videogram producer) and first communication to the public of a program (audiovisual communication companies). However, if a fixation of a performance, a phonogram or a videogram, is made available or communicated to the public within the period, the rights shall expire 50 years from the date of the first communication or availability to the public, whichever is the earlier.

5. Protection of previously unpublished works:

Article 4 of the Term Directive has been implemented in Article L. 123-4 of the CPI. Under this article, posthumous works disclosed after the expiration of the term protection (70 years after the author’s death) shall benefit from a protection of 25 years from the date of the publication.

6. Critical and scientific publications:

Article 5 of the Term Directive has not been implemented into French law.

7. Protection of photographs:

Article 6 of the Term Directive has been implemented in Article L. 112-2 of the CPI. Photographic works and works produced by techniques analogous to photography are protected under the conditions provided by the Term Directive. However, the CPI does not contain any other provisions for non-original photographs.

8. Protection vis-à-vis third countries:

Article 7.1 of the Term Directive has been implemented in Article L.123-12 of the CPI for authors’ rights. Article 7.2 of the Term Directive has been implemented in Article L. 211-5 of the CPI for related rights. In any case, the term of protection of the foreign work cannot exceed the term laid down in Article L.123-1 of the CPI (70 years after the author’s death) for author’s rights and in Article L. 211-4 of the CPI (50 years after date of performance, fixation and communication to the public) (See answer to Q. 4 for related rights). Not aware of any longer terms of protection granted to non-Community nationals before the implementation of the Term Directive.

9. Moral Rights:

Moral rights are provided by Article L. 121-1 to Article L. 121-9 of the CPI. They are perpetual, inalienable and imprescriptible.

10. Application in time:

The Term Directive has not been implemented as French law was already in compliance with the Directive.

11. National exceptions (such as list of beneficiaries)

There are no such provisions under French law. However, there is a specificity regarding the right to disclose post-mortem works. Under Article L.121-2 of the CPI, the right of disclosure is vested into the executor(s) designated by the author. If none, or after their death, and unless the author has expressed a different will, the right shall be granted in the following order to: the descendants, the spouse, the heirs other than descendants and the universal legatees. This right can be exercised after the expiration of the authors’ right protection (i.e.70 years p.m.a.). (See also answer to Q.5 relating to protection of previously unpublished works).

12. National exceptions (such as "extension of term of protection due to wars")

The CPI contains three provisions extending the term of protection for works published during WWI /WWII or whose authors died for France during the wars.
To compensate the loss and difficulties of commercial exploitation of the works during WWI and WWII, the Parliament added in 1919 (introduced by the Law of 3 February 1919) and in 1951 (introduced by Law of 21 September 1951) two extensions of term of protection:

• Under Article L. 123-8 of the CPI, the rights vested in the heirs and successors of authors, composers and artists shall be extended for a period of 6 years and 152 days for works published before the Signature of the Versailles Treaty and which did not fall into the public domain on 3 February 1919.

• Under Article L. 123-9 of the CPI, the rights vested in the heirs and successors of authors, composers and artists shall be extended for a period of 8 years and 120 days for works published before 1 January 1948 and which did not fall into the public domain on 13 August 1941.

The starting point of these extensions is not the author’s death but the publication of his work. It should be noted that the two extensions can be added for a work published during WWI, which can benefit then of an extension up to 14 years and 272 days.

To compensate the ‘premature’ death of an author who died for France, the Parliament also added in 1951 (introduced by Law of 21 September 1951) a third extension of term of protection:

• Under Article L. 123-10 of the CPI, works of authors, composers and artists who died for France during WWI or WWII should benefit from an extra protection of 30 years.

These articles were not repealed by the Parliament when it implemented Directive 93/98/EEC into French law. However, in two decisions of 27 February 2007 concerning non-musical works, the Court of Cassation excluded the application of Article L. 123-8 and Article L. 123-9 by interpreting them in the light of Directive 93/98/EEC. The Court ruled that the new harmonised term (70 years p.m.a. instead of 50 years p.m.a.) absorbed the ‘extensions due to wars’, without shortening longer terms of protection that would have started before 1 July 1995. The Court of Cassation applied Article 10 (1) of the Directive providing the respect of established rights (“Where a term of protection which is longer than the corresponding term provided for by this Directive was already running in a Member State on 1 July 1995, this Directive shall not have the effect of shortening that term of protection in that Member State”).

Taking into account the fact that musical works benefitted from a term of protection of 70 years p.m.a. and non-musical works from a term of protection of 50 years p.m.a. before 1 July 1995, commentators have concluded that:

- extensions due to wars are absorbed in the longer term of protection for non-musical works: Under the previous regime, a work published during WWI would benefit from a term of protection of 64 years and 272 days (50 years p.m.a. + 14 years and 272 days); a work published during WWII would benefit from a term of protection of 58 years and 120 days (50 years p.m.a. + 8 years and 120 days).
  → These two terms of protection are lower than the new harmonised term (70 years p.m.a). Therefore, only the term of 70 years p.m.a. will apply.

- extensions due to wars subsist for musical works since they were benefitting from a longer term of protection before 1 July 1995:
  Under the previous regime, a work published during WWI would benefit from a term of protection of 84 years and 272 days (70 years p.m.a. + 14 years and 272 days); a work published during WWII, would benefit from a term of protection of 78 years and 120 days (70 years p.m.a + 8 years and 120 days).
  → These terms of protection are higher than the new harmonised term (70 years p.m.a) and should subsist.

In the two decisions of 27 February 2007, the Court of Cassation did not have to rule the fate of Article L. 123-10 of the CPI, which provides for an extra extension of term of 30 years if the author died for France during WWI or WWII. A legal uncertainty regarding the application and interpretation of Article L.123-10 remains:

- In case of musical works whose authors died for France, the term of protection should be 70 years p.m.a + 30 years i.e. 100 years. In the event the musical work was published during WWI, an extra extension of 14 years and 272 days should be added. The term of protection of a musical work published during WWI and whose author died for France is therefore 114 years and 272 days. It should be noted that if the musical work has been published during WWII, the extra extension is 8 years and 120 days and the total term of protection 108 years and 120 days.
  This interpretation is in line with Article 10(1) of Directive 93/98/EEC and the ruling of the Court of Cassation on the longer term of protection existing before 1 July 1995.

- In case of non-musical works whose authors died for France, commentators are divided on how to calculate the term of protection:
(a) Some consider that the extensions due to wars are not applicable as they are absorbed in the new harmonised term of protection. As a consequence, only the extension due to the circumstance of the death of the author (30 years) should apply. Therefore, a non-musical work, whether published or not during WWI or WWII, and whose author died for France will benefit from a term of protection of 70 years p.m.a. + 30 years i.e. 100 years.

(b) Whereas others consider that the calculation should be made as if the situation occurred on 1 July 1995 i.e. under the previous regime since the total term of protection would be higher than 70 years p.m.a.

As a consequence, a non-musical work whose author died for France would benefit from a term of protection of 80 years (i.e. 50 years p.m.a. + 30 years); for a work published during WWI, 14 years and 272 days are added (i.e. 94 days and 272 days) and for a work published during WWII, 8 years and 120 days are added (i.e. 88 years and 120 days).

As a precautionary measure, we have opted in the flowchart for a term of protection of 100 years for non-musical works whose authors died for France, whether the works were published during WWI/WWII or not.

The case of a non-musical work published during WWI or WWII and written by an author who died for France is not hypothetical. Several famous authors belong to this category (e.g. Antoine de Saint-Exupéry, Guillaume Appolinaire, Charles Péguy).

13. Any longer term affected by the Term Directive?

No.

14. Noteworthy national divergences:

The exceptions set up in Article L. 123-8, L. 123-9 and L. 123-10 of the CPI are not consistent with the Term Directive. Although the Court of Cassation ruled that the term of protection of 70 years covers the ‘extensions due to wars’, the Court did not take any position on the application of Article L. 123-10 and on the application of ‘extensions due to wars’ to musical works. See Answer to Q. 12.
10. Germany

Author: John Weitzmann

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

**Works:** Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz, UrhG), Gesetz betreffend das Urheberrecht an Werken der bildenden Künste und der Photographie (Kunsturhebergesetz, KUG)

**Aesthetical models** (registration required): Geschmacksmustergesetz (GeschmG)

**Fonts, writing symbols** (registration required): Schriftzeichengesetz

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

§§ 65 I, 69 UrhG implement Art. 1 Par. 2 of the Directive with the only difference of a special rule for motion pictures (see answer to question 3).

§ 66 I UrhG implements Art. 1 Par. 3 in almost identical wording, but does so for anonymous and pseudonymous works only (because under german copyright law that is the only type of works where the term is calculated from first lawful publication).

**Art. 1 Par. 4 of the Directive** has not been implemented as there is no category of “collective works” apart from works of joint authorship in german copyright law.

**Art. 1 Par. 5:** For works published in instalments, § 67 UrhG says that if they are works in the meaning of § 66 I S. 1 UrhG (anonymous and pseudonymous works), the term is to be calculated for each instalment separately from the time of its publication. As an argumentum in contrario, for all non-anonymous works the term is calculated from the authors death as usual.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

Yes, joint authorship is regulated by § 8 UrhG, meaning works of which the different contributions of several creators cannot be exploited individually, which could be regarded as “commercially inseparable”. The protection term is 70 years post mortem auctoris, beginning with the first year after the longest living author's death, §§ 65 I, 69 UrhG (for film works and similar works that applies only to main director, script writer, dialogue writer and composer of an original score, § 65 II UrhG).

§ 9 UrhG covers work combinations, meaning several independent works that have been combined for exploitation, but can also be exploited individually. The term is to be calculated for each work individually and runs 70 years post mortem auctoris, beginning with the first year after the author's death, §§ 64, 69 UrhG.

§ 4 UrhG defines collection works and database works (or is that “collective works” in english terminology? I don't think so) as being personal mental creations (= works as defined by § 2) because of the choice and setup of the independent elements they contain. The term is the usual one for works, see previous paragraph above.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

A co-written music will in most cases be one of joint authorship. An opera as a combination of music and libretto or a song being music plus lyrics is regarded as a work combination, see answer to question 3.

Generally, joint authorship in the meaning of § 8 UrhG at least requires “a common plan, a common intent and a common goal” of the authors involved. This seperates joint authorship from derivative works, for example adaptation/continuation/enhancement of a pre-existing work. It is irrelevant whether the contributions were made at the same time or not and whether it is a horizontal collaboration or a vertical one.

Examples of works that have the required commercial unity (= usually exploited as a whole) are:

- Motion pictures
- Computer programs written by several programmers (although consecutive enhancements have been regarded as derivative works)
- Academic papers written by more than one author

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

No, legal persons can only receive usage rights to the creator’s own rights (sometimes that happens instantly with works made for hire) as well as related rights (film producers, audio carrier producers, ...).

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Yes, any person that actually makes a creative contribution that becomes part of the motion picture is regarded as co-creator. However, they all by default grant a usage right to their joint authorship right to the film producer if not expressly agreed otherwise, § 89 I UrhG. Regarding the term, see answer to question 3.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

That depends: If they meet the requirements of works in the meaning of § 2 UrhG, official works are protected as other works, but § 5 UrhG makes an exception for:

- Acts of parliament (from the moment they enter the parliamentary process)
- Government directives
- Official decisions and announcements
- Court decisions and officially issued decision formulas
- Other official works, if the official body publishing them intends them to be generally received.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

See answer to question 13.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

See answer to question 13. In addition to Art. 4 of the Directive, § 71 I sentence 2 UrhG expressly states that § 71 UrhG also covers works that have never been protected within the territory of the UrhG, if the author – at the time of first lawful publication – is dead more than 70 years. The protection encompasses all rights of an original author except for moral rights/personality rights.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, there is a protection for scientific editions of out-of-copyright works from § 70 UrhG, if they substantially differ from editions already known. The term expires 25 years after publication or, if it was not published until then, 25 years after the edition was made, § 70 III UrhG. It begins with the following year, § 69 UrhG.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

Yes, non-original photographs (“Lichtbilder”) carry the same protection as original ones (“Lichtbildwerke”), § 72 UrhG, with the exception that the term is 50 years instead of 70, calculated from publication or, if not published within 50 years, from making of the photo, § 72 III UrhG.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

For original databases, (= database works) see answer to question 3.

Non-original databases receive a sui-generis protection from § 87a UrhG and following §§. The term is 15 years from publication or, if no publication has occurred within that time, from the making of the database, § 87d UrhG.
Due to the fact that § 87a I 2 UrhG regards a database that was substantially changed in type or size as a new database, protection can de facto be endless if the database is updated continuously.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

- The protection term for works is 70 years p.m.a., § 64 UrhG;
- for related rights the general rule is 50 years from first lawful public display/publication of a recorded performance (or, if no lawful publication was made within that time, from the date of the making/recording of the performance), § 82 UrhG;
- contrary to the aforementioned, for the related right of the “Veranstalter”, the person or entity hosting a performance, the term is 25 years, §§ 81, 82 UrhG;
- for scientific editions, the term is 25 years from first lawful publication (or, if no lawful publication was made within that time, from the date of the making of the edition), § 70 III UrhG;
- for posthumous works (Art. 4 of the Directive), the term is 25 years from first lawful publication or public display, § 71 III UrhG;
- for the aforementioned related rights, it is theoretically possible to push the term to its double by not publishing until shortly before the term ends;
- for registered aesthetical models (objects less creative/individually designed than objects of applied art, the latter are regarded as works in the meaning of § 2 UrhG) the maximum term is 25 years from creation, § 27 GeschmG;
- for registered fonts the protection term is according to the 1973 Vienna Agreement.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

The basic principle of the UrhG and the federal court decisions is that of lex loci protectionis.

In general, a comparison of protection terms according to Art. 7 Par. 8 of the Revised Berne Convention is made by german courts.

Apart from that, § 120 II UrhG states that EU/EEA foreigners receive the same copyright protection for their works as german nationals. § 121 I UrhG grant local protection also to all other nationals for all their works (original version or translation) that were published in Germany and had not been published (original version or translation) outside Germany more than 30 years before that time. § 121 II UrhG extends that to all sculptural works that have been duly attached to real estate within Germany.

The Revised Berne Convention (see Art. 14 and 7 Par. 8) and TRIPS (see Art. 3 and 4 lit. b)) have become part of german copyright law by way of a transformatory act of parliament, and are mentioned generally by § 121 IV sentence 1 UrhG.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

No, moral rights transfer to the heir of a deceased author (§§ 11, 30 UrhG) but end with the copyright protection 70 years p.m.a. The only limitation for inherited moral rights applies in relation to withdrawal of publication based on a changed attitude, which the heir needs to prove as being formed before the author died, see § 42 I sentence 2 UrhG.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The preceding Term Directive 93/98/EEC was implemented in Germany by the “Gesetz über Urheberrecht und verwandte Schutzrechte” entering into force on July 1st 1995. The transitional provision in § 137f II UrhG lead to the expired rights in a lot of photographs being resuscitated, because they were still protected at that time in Spain. As far as I know, no further implementations were necessary for Directive 2006/116/EC.

The last overhaul (regarding terms) before 1995 had occurred in 1965.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?
18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No, I checked back until 1995 but couldn't find any longer running terms.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No, that is discussed from time to time but so far didn't make it into law making.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No.
1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

The term of protection of copyright and related rights in Greece is governed by law N. 2121/93 “Πνευματική ιδιοκτησία, συγγενικά δικαιώματα και πολιτιστικά θέματα” ΦΕΚ Α’ 25/4-3-1993 (N. 2121/93 “Intellectual property, related rights and cultural matters” ΦΕΚ Α’ 25/4-3-1993).

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The main trigger point for the calculation of the term of protection of works of copyright according to Greek law is the death of the author (Article 29, para.1 N.2121/93). Thus, the default term of protection for copyright in Greece is 70 years after 1 January of the year following that of the death of the author.

Exceptions apply in the following cases:

1. Works of joint authorship: the duration of copyright belonging jointly to two or more persons in their capacity as co-authors of a work is 70 years from 1 January of the year following the year of the death of the last surviving co-author (Article 30).

2. Anonymous or pseudonymous works: the duration of protection for anonymous or pseudonymous works is 70 years after 1 January of the year following that in which the work was first lawfully communicated to the public, unless the author discloses his/her identity before the expiry of this term (Article 31, para.1).

3. Cinematographic works: see below answer to Q. 6.

4. Posthumously published works: see below answer to Q.9.

5. Works published in volumes, parts, instalments, issues or episodes: where a work is published in volumes, parts, instalments, issues or episodes, and the term of protection runs from the time when the work was lawfully made available to the public, each volume, part, instalment, issue or episode is considered to be a separate work and the term of protection runs separately for each (i.e. the trigger point will be the date of publication of each) (Article 31, para.2).

6. Works in the land of origin of which copyright has expired: see below answer to Q.14.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

Under Article 7 para. 1 N. 2121/93 defines works of joint authorship as works created with the immediate cooperation of two or more authors. All authors are original co-owners of the rights over the work of joint authorship in equal parts, unless otherwise agreed. The term of protection of the work of joint authorship is 70 years after the death of the last surviving co-author.

Para. 2 of the same article defines collective works as works created through the independent contributions of two or more authors under the intellectual direction and coordination of a natural person. That person is deemed to be the original owner of the rights over the collective work, while the authors of the individual contributions are the original owners of the rights over their own contributions, provided these are capable of independent exploitation. The term of protection of the collective work is 70 years from the death of the person under whose intellectual direction and coordination the work was created.

Para. 3 defines a compilation as a work consisting of parts which have been separately created. The authors of the individual parts are considered to be co-owners of the rights over the compilation and exclusive owners of the rights of the part each one created, provided that said part is capable of independent exploitation. The term of protection of the compilation is 70 years from the death of the last surviving co-author.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

That will depend on the circumstances under which the work was created.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?
No, a legal person cannot be the original author of a work of copyright under Greek law.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Under Art. 9 N. 2121/93 the director of a cinematographic or audiovisual work is presumed to be the author.

However, according to Article 31 para. 3, the term of protection of such works expires 70 years after the 1 January of the year following the year of death of the last of the following persons to survive: the principle director, the author of the screenplay, the author of the dialogue and the composer of the music created for use in the work.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Under Art. 2 para. 5 N 2121/93 no copyright protection is granted to official texts with which political power is exercised, particularly legislative, administrative or judicial texts.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The duration of the right of performers, phonogram producers, broadcasting organisations and the producers of the first fixation of a film is set out in Art. 52 N. 2121/93, according to which:

1. The rights of performers expire 50 years after 1 January of the year following that in which the performance took place. If, however, a recording of the performance was lawfully brought into circulation or communicated to the public within that period, the rights shall expire 50 years after 1 January of the year following that in which the recording was first lawfully brought into circulation or, if earlier, communicated to the public. The rights of performers cannot expire before the death of the performer.

2. The rights of producers of phonograms expire 50 years after 1 January of the year following the year in which the phonogram was manufactured. If, however, the phonogram was lawfully published within that period, the rights shall expire 50 years after 1 January of the year following that in which the phonogram was first published. If the phonogram has not been published within that period, but has been communicated to the public, the rights shall expire 50 years after 1 January of the year following that in which the phonogram was first lawfully brought into circulation. However, if the term of protection had already expired pursuant to Art. 3 of the Term Directive in its version before amendment by Directive 2001/29/EEC on 22 December 2002, protection is not revived.

3. The rights of broadcasting organisations expire 50 years after 1 January of the year following that in which a programme was first broadcast, regardless of the technical facilities used.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Under Art. 51A N.2121/93, any person who, after the expiry of the term of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work is entitled to protection equivalent to the economic rights of the author. The term of protection of these rights is 25 years after 1 January of the year following that in which the work was lawfully published or lawfully communicated to the public for the first time.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No such protection exists in Greece.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

No, Greek law does not provide for related rights protection for photographers regarding photographs without originality.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.
Unoriginal databases are protected under **Art. 45A N.2121/93**. According to **Article 45A para. 7**, the term of protection for such databases is 15 years from 1 January of the year following the date of completion or of the last substantial change to the contents of the database (such changes should be evaluated qualitatively or quantitatively and may take the form in particular of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment). If however a database is made available to the public before end of this term, protection expires 15 years from 1 January of the year following the date when the database was first made available to the public.

Original databases are protected by copyright law (**Art. 2 para. 2a N. 2121/93**) and receive the same term of protection as other copyright works (70 years after the death of the author, unless an exception applies).

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

**According to Art. 51 N. 2121/93** publishers have an exclusive right over the reproduction, for purposes of exploitation, of the typographical arrangement and pagination of the works they have published.

Under Art. 52 the term of protection for the rights of publishers is set at 50 years after the last publication of the work.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

**Under Art. 67 N. 2121/93** the term of protection of works of copyright is governed by the legislation of the country where the work was first lawfully communicated to the public or – if the work is unpublished – of the country of the nationality of the author. The term of protection of the subject matter of neighbouring rights is governed by the legislation of the country where the performance, fixation or broadcast or print publication took place.

The above rules apply unless an international treaty ratified by Greece applies. Thus the rule of shorter term applies under the various WIPO-administered treaties, as well as the EU’s Term Directive.

To my knowledge, no international agreements granting a longer term of protection to non-Community nationals apply.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

Yes, the moral rights of paternity and integrity are perpetual and inalienable in Greece. Under **Article 29(2) N.2121/93**, after the expiry of the economic rights, the State, represented by the Minister of Culture, is authorised to exercise the relevant rights.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

**N. 2121/93** was amended to bring its provisions into line with those of the Term Directive with **Art. 8 of N. 2557/1997 (ΦΕΚ Α’271/1997)**.

**Art. 68A N. 2121/93** provides that the new rules on the term of protection apply, from the date of entry into force of the Act (1 July 1995), to works which were protected by national legislation on copyright on 1 July 1995 in a least one EU Member State or one state party to the Agreement on the European Economic Area.

Third parties who had undertaken the exploitation of works or of the subject matter of related rights, which had entered the public domain before the entry into force of the new provisions were allowed to persist with that exploitation in the same way, using the same means and to the same extent until 1 January 1999.

Under **Article 68 N. 2121/93**, works whose term of protection had expired at the time of entry into force of the law remain in the public domain.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives) the State via
escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No such provisions apply in Greece.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No, Greek law does not provide for war-related extensions of the term of protection.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

N/A.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

Greek law does not provide for a Domaine Public Payant.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No other noteworthy divergence applies in Greece.
12. Hungary
Author: Eszter Kabai

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

Act No LXXVI of 1999 on Copyright (“CA”)

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Yes:

**Joint authorship:**

Art 31 of CA sec. (2) “The seventy years' term of protection shall be counted from the first day of the year following the death of the author and, in the case of joint authors, from the first day of the year following the death of the joint author dying last.”

**Collective works:**

Art 31 of CA sec. (5) The term of protection of a collective work shall be seventy years counted from the first day of the year following the first disclosure of the work.”

**Anonymous and pseudonymous works:**

Art 31 of CA sec. (3) In case the person of the author is unknown, the term of protection shall be seventy years and shall be counted from the first day of the year following the first disclosure of the work. However, should the author become known during this period of time, the term of protection shall be counted as in Paragraph (2)”

(The author is unknown either he or she used a pseudo name and otherwise his/her name is not known or the work was disclosed anonymously. )

**Works published in parts:**

Art 31 of CA sec. (4) In the case of a work disclosed to the public in several parts, the year of the first disclosure shall be counted part by part.”

(Of course section (4) applies only if the author is unknown.)

As for the calculation of term of protection, please see question 2.

As for the definitions:

**Joint authorship:**

Definition is not included in the CA. Joint authorship means that two or more authors co-operate in creation of the work. Joint authorship applies regardless the contributions are inseparable or separable (latter is called connected work). Distinction should be made between works of joint authorship and derivative works.

**Provisions on joint authorship:**

Art 5 of CA (1) The authors of a joint work, the parts of which cannot be used independently, shall enjoy the copyright protection jointly and - in case of any doubt - in equal proportions, however, any of the joint authors may take action independently in the event of the infringement of the copyright. (2) In case a joint work is made up of parts which can be used independently (connected works), independent copyright shall belong to each of the joint authors with regard to the respective individual part. The authorization of all authors of the original joint work is required if any part of the work consisting of joint works and created jointly is wanted to be joined with a different work.”
Collective works:

Art 6 of CA  
“(1) In the case of a collective work (e.g., national standard), the copyright shall be transferred by legal succession to the natural or legal person or business company without legal entity at whose initiative and under whose instructions the work was created and who published it in his own name.
(2) A work shall be regarded as a collective work if the contributions of the authors co-operating in the creation of the work are combined in the product of joint creation in a manner which makes the separate determination of the individual authors' rights impossible."

Compilations:

Art 7 of CA  
“(1) A collection shall be under copyright protection if the selection, arrangement or editing of its contents is of individual and original nature (collection of works). The protection shall apply to the collection of works even if its parts or materials do not or may not enjoy copyright protection.
(2) Regarding the whole of the collection of works the copyright shall belong to the editor, however, this shall be without prejudice to the independent rights of the authors of the individual works selected for inclusion in the collection as well as of the holders of rights in neighbouring rights covered achievements.
(3) The copyright protection of a collection of works shall not extend to the materials of the collection of works."

Main rule of term of protection shall independently apply to the contribution of the editor and the authors of the materials included in the collection.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works are considered to be works of joint authorship.

Neither co-written musical works nor other type of specific works of joint authorship are explicitly regarded in our copyright act. Only practical examples can be listed.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

No, the original author is always a natural person. A legal person can be only a derivative rightholder. Special term of protection rules for collective works are mentioned at question 2.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Term of protection:

Art 31 of CA sec. (6) The term of protection of a cinematographic creation shall be counted from the first day of the year following the death of the author thereof dying last."

According to the Hungarian legislation the following authors shall be regarded co-authors of an audiovisual work: Art 64 of CA sec. (2) The authors of the literary and musical works prepared for a motion picture, the director of the motion picture, and all other persons having made creative contributions to the production of the whole of the motion picture shall be taken to be the authors of the cinematographic creation. This provision shall not prejudice the statutory rights of the authors of other works used in producing the cinematographic creation.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Certain types of official documents are not protected by copyright:

Art 1 of CA sec. (4) The protection provided by this Act shall not cover provisions of law, other legal instruments of state administration, judicial or authority decisions, authority or other official announcements and documents, as well as standards and other like provisions made obligatory by legislative acts."

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?
Yes.

**Art 84 of CA**  
“(1) The rights covered by the provisions of this Chapter shall be under protection for the following periods of time:

- a) rights in sound recordings and in the performances fixed therein, for fifty years from the first day of the year following the one in which the sound recording was first made public, and for fifty years from the first day of the year following the one which includes the date of completion of the sound recording if this was not made public during the term named;
- b) rights in unfixed performances, for fifty years from the first day of the year following the one in which the performance was held;
- c) rights in broadcast programmes or in own programmes communicated by cable to the public, for fifty years from the first day of the year following the one in which the programmes were first broadcast or the communication occurred;
- d) rights in films, for fifty years from the first day of the year following the one in which the film was released for distribution or for fifty years from the first day of the year following the one in which the production of the film was completed if the film was not released during the term named.

(2) In case a sound recording was not made public through commercial distribution within fifty years from the first day of the year following the one in which the sound recording was made, however, it was communicated to the public during the term referred to, the term of protection provided for in (1) (a) shall be counted beginning with the year following the one in which the first communication to the public occurred.

(3) In case a film is communicated to the public prior to its release for distribution, the term of protection provided for in (1) (a) shall be counted by replacing the year of the first release for distribution by the year of the first communication to the public.”

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes.

Art 32 of CA  
“Copyright protection of a scope consistent with the author's economic rights shall be due to the person who, following the expiration of the term of protection or the period of time determined in Article 31 (7), discloses according to the law a work previously not disclosed to the public. The term of such protection shall be twenty-five years from the first day of the year following the first disclosure.”

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No, these works are not protected after the term of copyright protection expired.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

No, non-original photographs are not protected in Hungarian legislation.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

Original databases are protected under copyright protection and the general term of protection rules apply. ([Art 31 of CA](#) as cited at question 2.)

Unoriginal databases are regulated in a different chapter of the copyright act, the term of protection rules follow the database directive:

**Art 84/D of CA**  
“(1) The term of protection applying to the rights provided for in this Chapter shall be as follows. It shall run for fifteen years from the first day of the year following the year in which the database was first made public, or for fifteen years from the first day of the year in which the database was completed in case it was not made public during the term referred to.

(2) The term of protection applying to the database as calculated according to (1) shall recommence in case the contents of the database have undergone a substantial alteration as a result of which the altered database, as such, shall be rated as one completed with substantial resources. A substantial alteration of the database may be the result of successive additions, deletions and modifications.”

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as
to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Art 2 of CA: "The copyright protection defined in this Act shall extend to a work first published abroad only if the author is a Hungarian national, or if the author is entitled to the protection pursuant to an international agreement or by reciprocity."

There are not any more provisions in the Copyright Act on protection vis-à-vis third countries. The relevant international treaties apply as these are accepted and promulgated in Hungary. As for copyright term of protection Art 7 of Berne Union shall be taken into account in accordance with the cited Article 7 of Term Directive.

As for the second question – the answer is no.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

No. According to Art 14 of CA: "(1) After the author's death, action against the infringement of the moral rights specified in this Act can be taken within the term of protection (Article 31) by the person put in charge of the management of the author's literary, scientific or artistic legacy by the author, and if there is no such person or the one put in charge fails to take actions, it shall be the person having acquired the economic rights by virtue of inheritance.

(2) After the expiration of the term of protection the organization performing the collective management of rights (Article 85 to 93) or the association representing authors' interests may take action, with reference to offence against the author's memory, against a behaviour which would be taken under the term of protection to infringe the author's right to have his name indicated on his work or in a communication related to his work."

Section (2) provides for only a residual right of indication of author's name.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The previous copyright act was amended according to the Term Directive in 1994. (10 years before the accession to the EC)

There are many transitional provisions for copyright and neighbouring rights as well since these rights have been revived by the implementation of the longer term of protection. I am citing here the transitional provisions of the presently effective CA:

Articles of CA

"Article 108

(1) The provisions of Article 31 shall, among others, apply to the works whose term of protection calculated according to the provisions previously in force had expired before the entry into force of Act No. VII of 1994 on the amendment of specific legal rules relating to copyright and the protection of industrial property.

(2) The rights determined by this Act shall be due to performers, the producers of sound recordings, the radio and television organizations and those transmitting by cable their own programmes to the public even if the twenty years' term - relating to them - calculated from the end of the year referred to by Article 84 had expired by the time of the entry into force of Act No. VII of 1994.

(3) In case the term of protection relating to the authors' economic rights and the neighbouring rights related to the copyright had expired by the time of the entry into force of Act No. VII of 1994, the uses performed in the period between the expiration and the time of the entry into force of this Act shall be rated as free uses, irrespective of whether these rights will again, or will not, fall under protection following the entry into force of this Act.

(4) The uses referred to in Paragraph (3) will be possible to be continued - in the case of sound recordings regarding copies manufactured before the entry into force - for one year more following the entry into force of this Act, but only to the extent existing at the time of the entry into force. The right of such uses performed within the framework of economic activity may be transferred only jointly with the authorized economic organization or its organizational unit performing the use. An equitable remuneration shall be due to the rightholder on any use performed even after the entry into force of this Act.

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The provisions of Paragraph (4) shall be applied as appropriate even if definite preparations have been made towards the use before the date of the promulgation of this Act, on the understanding that in this case the use may be begun and carried on to the extent of the preparation that existed at the promulgation of this Act.

(6) The alteration, adaptation or translation performed in the period of time referred to in Paragraph (3) shall be regarded as if it had been performed with the authorization of the author.

(7) On the use after the entry into force of this Act of the alteration, adaptation or translation referred to in Paragraph (6) an equitable remuneration shall be due to the rightholder who holds copyright in the work serving as a basis for the action mentioned.

(8) Any debates concerning remuneration considered as due on the basis of the provisions of Paragraphs (4) and (7) shall be settled through judicial procedure.

(9) The right of use acquired through an agreement for use concluded prior to the entry into force of Act No. VII of 1994 for the full term of protection or for an indefinite period of time shall be due to the user - under the terms and conditions of the agreement for use - after the entry into force of this Act, if the copyright or the neighbouring right related to the copyright falls again under protection pursuant to this Act.

Article 108/A.

(1) The provisions of Articles 31 and 84 – with the exception regulated in the first sentence of Article 13(7) of Act LXXVII of 2001 – shall also apply to works and performances of neighbouring rights, the term of protection of which had not expired at least in one Member State of the European Economic Area until 1 July 1995.

(2) The provisions of Article 108(3) to (9) shall be applied mutatis mutandis to the works referred to in paragraph (1), on the understanding that, for the purposes of paragraph (1), the entry into force and promulgation of Act VII of 1994 and of this Act shall be construed as meaning the entry into force and promulgation of the Act promulgating the international treaty on the accession of the Republic of Hungary to the European Union.

Article 109

The provision of Paragraph (6) of Article 31 shall be applied in case it does not result in shortening of the term of protection calculated according the provisions previously in effect. The provision of Paragraph (6) of Article 31 shall be applied also to cinematographic creations of which the term of protection had already expired before the entry into force of this Act. The provisions of Paragraphs (3) to (9) of Article 108 shall, mutatis mutandis, apply in this case, too, on the understanding that the entry into force of this Act shall replace the entry into force of Act No. VII of 1994.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/ issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No, there is not such distinction.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No, there is not such exception.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

There can be incidental cases if all the authors of an audiovisual work die before the term of protection calculated under the previous legislation (50 years after the first public performance (premiere)) would expire. See Art 31 of CA section (6) as cited at question 2 and Art 109 of CA as cited at question 16.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

Yes. Art 100 of CA “(1) After the expiry of the term of protection for copyright, the transfer of the ownership of an original work of art by a dealer in works of art shall be subject to payment of a contribution.

(2) The contribution shall be 5 per cent of the sale price net of tax and other public dues (e.g. cultural contribution). The provisions of § 70 shall apply mutatis mutandis to the definition of the scope of original works of art and to the sale price, as well as to the person required to pay the contribution, to the collection and transfer of the contribution, save that the collecting organization shall use the collected contribution for the purposes of supporting artistic activities and contributing to the social welfare of creative artists ."
(3) There shall be no obligation to pay the contribution if the ownership of the original work of art is obtained by or from a museum.
(4) The organization performing the collective management of rights shall be obliged to record and administer under a separate head the amount collected as contributions.
(5) The organization performing the collective management of rights shall annually inform the public on the amount of the contribution, and on the uses thereof by means of the official gazette of the ministry headed by the minister responsible for culture.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No.
13. Iceland

Author: Rán Tryggvadóttir

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

Chapter IV. of the Icelandic Copyright Act (ICA) No. 73, of 29 May 1972, with later amendments. The Act is available in English translation on the Ministry of Education homepage; http://eng.menntamalaraduneyti.is/Acts/nr/4413. The general rule is that Copyright shall last until 70 years have elapsed from the end of the year of the author's death, cf. Art. 43 of the ICA.

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

In the case of a work of joint authorship, cf. Art. 7 of the ICA, the prescribed 70-year period shall be calculated from the end of the year of the death of the last surviving author, see Art. 43 of the ICA.

There are no special provisions for the term of protection of collective works, author of each part has copyright to his or her part, cf. Art. 7 of the ICA by counter-argument, and the normal term of protection according to Art. 43 of the ICA applies.

When a work has been presented anonymously, cf. the second paragraph of Article 8 of the ICA, copyright to the work shall last until 70 years have elapsed from the end of the year of its presentation. Should such a work have been published in individual parts, such as booklets, volumes or in similar fashion, an independent copyright period shall apply for each individual protected part, cf. Art. 44(1). If a work is published under a pseudonym which is generally know to whom it refers the normal term of protection applies, cf. Art. 8(1)(2). There are no special provisions on term of protection for unknown pseudonums so in such cases presumably the provision on anonymous works applies.

No special rules apply to works published in parts, instalments, issues or episodes when the author/authors are known, for such works the normal term of protection applies, cf. Art. 43 of the ICA. If the author is unknown the provision of Art. 44(1) applies, see above.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

The definition of joint authorship is when a single work has two or more authors, whose individual contribution cannot be separated into independent works, cf. Art. 7 of the ICA

In Art. 6(1) of the ICA it is provided that when a work, or parts of works, by one or more authors, are incorporated into a composite work (compilation), which may be in itself considered to be a literary or artistic work, the person creating the composite work shall hold copyright thereto. His right shall in no way affect copyright to the works incorporated into the composite work (compilation). Each individual work in the compilation which has a known author will be protected copyright according to the general rule in Art. 43 of the ICA. The compilation as such will also be protected by the same provision. In the case of a work in a compilation which has an unknown author the provision of Art. 44(1) will apply.

No special definition is to be found on collective work where the individual contribution of each author can be identified and separated. If that is not possible the rules off joint authorship apply.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works that cannot be separated into independent works would be considered works of joint authorship, i.e. of the composers. The co-operation of a songwriter and text writer of a song would normally result in a collective work where each had his own independent copyright. An example of joint authorship would be the co-operation of an artistic director and a photographer of a fashion photo show for a lifestyle magazine, cf. the decision of the Icelandic Supreme Court in case no. 315/2000.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?
The main rule in Icelandic copyright, as in the other Nordic countries, is that only persons can be authors and in work relationship the authors would maintain their copyright except if otherwise agreed upon or determined by custom. The only exception to that is in the case of computer programs that are made in the course of employment as a part of a job description, cf. Art. 42b of the ICA. No provisions is to be found on the term of protection that fall under Art. 42b. As Directive 2006/11 is part of the EEA Agreement the likelihood is that the term would be determined in accordance with Art. 1(4) of the Directive.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

See Art. 43, sentence two: Copyright to a cinematographic work shall, however, only last for 70 years from the year of death of the last of the following surviving authors of the cinematographic work:
1. principal directors,
2. manuscript authors, including the authors of dialogue,
3. composers, if the music has been composed especially for use in cinematographic works

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

According to Art. 9 of the ICA acts, regulations, administrative provisions, court rulings and similar official documents are not subject to copyright nor are official translations of such documents. Other official documents would be protected by copyright according to normal rules, i.e. the original author would enjoy the copyright for the usual term under Art. 43.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Article 3 of the Term Directive on the duration of related rights has been implemented. See the following Articles:

Art. 45(1) A performer shall have exclusive right to produce copies of his performance and to all distribution of such to the public ... This includes the prohibition in Art. 45(1)(4) regarding... the reproduction of a recording of a performance and its distribution to the public until 50 years have elapsed from the end of the year of the performance. Should the recording of the performance be distributed to the public within the prescribed period of protection the protection shall extend for 50 years from the end of the year of its first distribution.

Art. 46(1) Any reproduction or distribution by any means to the public of video (the Icelandic authentic text covers all moving images) and audio recordings, including gramophone records, is not permitted without the consent of the producer until 50 years have elapsed from the end of the year in which the original recording was made. Should a recording be distributed to the public within the prescribed period of protection the protection shall extend for 50 years from the end of the year of its first distribution.

Art. 48(2) (misplaced as Art. 48(1)(5) in the English translation) Broadcasting organisations’ rights under the first paragraph shall remain in force until 50 years have elapsed, running from the change of year following the first broadcast.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Article 44a of ICA: If a work has not been presented to the public within the period of protection provided for in Articles 43 and 44 the party first presenting the work after this period has elapsed shall acquire rights to commercial exploitation of the work comparable to those enjoyed by authors in accordance with the provisions of this Act. Protection shall last until 25 years have elapsed from the end of the year of presentation. This provision applies to the presentation of works carried out by nationals of or persons domiciled in countries of the European Economic Area, cf. Art. 60(3).

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

There is no definition of the public domain in the ICA nor any special provisions for the protection of critical and scientific publications of works which have come into the public domain. Critical and scientific publications of course enjoy copyright protection as other original works that fall under Art. 1 of the ICA. If they fall into the public domain because of the term of protection according to Art. 43 then that is final. If they fall into the public domain because of assignment, cf. Art. 27 of the ICA, which is possible in whole or in part, it depends on the terms on
the assignment if it is irrevocably in the public domain or on what terms it is in the public domain. Moral rights cannot be assigned except in clearly defined and specific instances, cf. Art. 4(3) of the ICA (English translation says exceptional circumstances which is slightly stricter than the authentic Icelandic text).

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

Photographs that are original works and fall under Art. 1 of the ICA enjoy the same protection as other works under copyright protection, cf. Art. 43 of the ICA.

Art. 49 of the ICA stipulates protection for non-original photographs: The reproduction of photographs, which do not enjoy the protection of this Act for works of art as provided for in the second paragraph of Article 1, is prohibited without the consent of the photographer or the party who has acquired his rights. Furthermore, the publication of such photographs without the permission of the rightholder shall be prohibited. If such a photograph is presented to the public on a commercial basis or for profit the photographer, or the subsequent holder of his rights, shall be entitled to remuneration. The protection of a photograph in accordance with this paragraph shall apply until 50 years have elapsed from the end of the year in which it was taken, cf. Art. 49(1) of the ICA.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

Original databases enjoy the same term of protection as other original works, cf. Art. 6 of the ICA: When a work, or parts of works, by one or more authors, are incorporated into a composite work, which may be in itself considered to be a literary or artistic work, the person creating the composite work shall hold copyright thereto. His right shall in no way affect copyright to the works incorporated into the composite work.

The provisions of the first paragraph shall not apply to newspapers and periodicals, cf. Article 40. The provisions of the first paragraph shall apply to databases, with regard to their selection and arrangement, provided general conditions for copyright protection have been satisfied. This shall not affect the copyright to any works which may be included in the database. Nor shall it affect the parallel rights of producers in accordance with Article 50.

A database, as referred to in this Act, cf. the third paragraph of this Article and Article 50, shall mean a collection of independent works, information or other details, which have been arranged in an organised or systematic fashion and are accessible by electronic means or by other methods. A computer program, which is used for the compilation or operation of a database and to which access is granted by electronic means, shall not be deemed a database for the purpose of this Act.

Non-original databases enjoy protection under Art. 50 of the ICA: Anyone who produces lists, tables, forms, databases or similar works, which contain a considerable collection of information or which are the result of substantial investment, shall have exclusive right to make copies of or publish the work as a whole or a substantial portion thereof. Repeated and systematic extraction and/or re-use of an insubstantial part of the contents of that database is unauthorised if such actions are contrary to its normal utilisation or infringe in abnormal fashion against the legitimate interests of the maker of the database.

The exclusive right to special protection, which is provided for in this Article, shall last for fifteen years from the end of the year in which the work was produced. If the work is published within the stated period of protection, however, the protection shall last for fifteen years from the end of the year in which the database is deemed to be made accessible to the public.

Should a work or part of a work, which is covered by this Article, enjoy copyright protection that right shall also be applied in parallel.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No other categories of works are given a different term of protection in Iceland. Works of applied art enjoy normal term of protection if they fulfill the criteria of originality, cf. Art. 10 of the ICA, otherwise they can enjoy design protection if they are registered under the Design Act No. 46/2001.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?
Art. 60 of the ICA sets out that protection under the Act is afforded to:

1. works of persons who are citizens of, or are resident in, a Member State of the European Economic Area;
2. [...] works by stateless persons and refugees who have their habitual residence in this country;
3. works which were first published in this country, cf. the second paragraph of Article 2;
4. structures which have been constructed in this country and works of art incorporated in them;
5. cinematographic works, if the head office of the commercial enterprise of their producer is located in this country or the producer himself is permanently resident in this country.

The provisions of Article 25 b shall apply to works of persons who are citizens of, or are resident in, a Member State of the European Economic Area. They shall also apply to works by nationals of states which grant similar protection to Icelandic works.

The provisions of Article 44a shall apply to the presentation of works carried out by nationals of or persons domiciled in countries of the European Economic Area.

The provisions of the second paragraph of Article 4 and Articles 51 to 53 shall apply to all works covered by the provisions of Article 1, irrespective of their origin or the nationality of the authors.

Art. 60a of the ICA stipulates that the provisions of Article 50 (on non-original databases) shall apply to works of nationals of, or persons domiciled in, countries of the European Economic Area.

For the protection of related rights Art. 61 of the ICA applies:

The provisions of Article 45 shall apply to:

1. artistic performances by persons who are citizens of, or are resident in, a Member State of the European Economic Area;
2. artistic performances by other foreign nationals and stateless persons, as follows:
   a. if the performance took place in Iceland,
   b. if the performance was recorded on an audio recording which enjoys protection in accordance with item 2 of the third paragraph,
   c. if a performance, which was not recorded on an audio recording, is broadcast by a broadcasting institution which enjoys protection in accordance with the of provisions of the fourth paragraph.

The provisions of Article 46 shall apply to visual and sound recordings irrespective of where, and by whom, they have been produced, while the right to remuneration under the third and fourth paragraphs of Article 11 shall apply solely to recordings that have been made in a Member State of the European Economic Area or in other states which grant rights of the same type applying to Icelandic recordings.

The provisions of Article 47 shall apply to:

1. Audio recordings of artistic performances by persons who are citizens of, or are resident in, a Member State of the European Economic Area
2. Audio recordings, and the artistic performances which they contain, if the producer of the audio recording is a citizen of, or is resident in, a Member State of the European Economic Area.

The provisions of Article 48 shall apply to broadcasting institutions if they fulfil either of the following conditions: the headquarters of the institution is in a Member State of the European Economic Area, or the broadcast was made via a transmitter which is located in a Member State of the European Economic Area.

For other works than above mentioned Art. 61a of the ICA applies:

The scope of this law may be extended in such a manner that its provisions apply to foreign nationals, subject to reciprocity. To this end the national government may verify international agreements providing for mutual protection with or without provisos which the government may deem appropriate and may be permitted to set. Reciprocity, as referred to in this Article, means that holders of copyright of each state party to the agreement enjoy the same rights in another state party to the agreement as do nationals of that state. The provisions of this Article shall be without prejudice to the application of international agreements in the field of copyright which have been previously ratified by Iceland.

Iceland is a member of the Berne Union and has ratified the Paris Act of the Berne Convention, cf. Official Announcement No. 763/1999.
15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

Art. 53(1) of the ICA states that the provisions of the second paragraph of Article 4, which stipulates that an author's work may not be altered or presented in such a manner or in such a context as would prejudice the author's reputation or the individual character of the work, shall apply to literary and artistic works which are not subject to copyright. According to Art. 53(2) legal proceedings resulting from infringement of the first paragraph may only be instigated at the demand of the Minister of Education, Science and Culture if he considers such action necessary for the protection of cultural interests in general. The ministry has never instigated legal proceedings on the basis of this provision.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

Amendment Act No. 145/1996 implemented the Term Directive. It came into force on the 17th of December 1996. Art. 12 of Act No. 145/1996 stipulated that the changes applies to works that had come into existence before the adaptation of the Act, as well as performer’s right, and the right to audio- and film recordings (related rights) cf. 12(1). Art. 12, cf. Art. 63 of the ICA, further stipulated that:

The provisions of the first paragraph shall not, however, apply to measures which have already been taken or rights acquired by third parties on the basis of prior Acts. The continuing distribution to the public or public exhibition of copies of works or of performances is permitted if the making of these copies was unrestricted at the time their distribution or exhibition took place, without prejudice, however, to the provisions of Article 24 prohibiting the rental or loan of works.

If the production of a copies of a work or performance, which was not protected under previously applicable legislation, has begun prior to the entry into force of the Act, or substantial preparation for such production is underway, the scheduled, necessary and normal production of copies may be completed, not later, however, than by 1 January of the year 2000. Copies produced in this manner may be distributed to the public or exhibited publicly.

If a work or performance is part of a recording for broadcasting, made while the work or performance does not enjoy protection or on the basis of the authorisation in the third paragraph, such recordings may be utilised for broadcasting until 1 January of the year 2000. The same applies to public presentation of cinematographic works.

If, due to a change in the period of protection under this Act, the period of protection of a work or performance becomes shorter than it would have been in accordance with previously applicable legislation the period of protection provided for by previously applicable legislation shall apply. This shall not apply, however, where the provisions of the third paragraph of Article 44 apply.

When the Database Directive was implemented into the ICA another transitional provision was added providing that by Art. 15 of Amendment Act No. 60/2000:

Protection of databases as provided for in Article 50, which were compiled during the period from 1 January 1983 until the entry into force of this Act, shall last until 1 January 2016, cf. Art. 63(6) of the ICA.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/ issue and other blood relatives/ the State via escheat etc.). Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

Not applicable

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

Not applicable

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?
20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

Not applicable

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

Not applicable
14. Ireland

Author: Linda Scales

1. Please cite the legal act which governs the term of protection of copyright and related right in your country.

The term of protection is governed, in general, by the Copyright and Related Rights Act 2000 ("the Act"), at sections 24-35 inclusive. For works in which copyright subsisted on January 1, 2001 (the date of commencement of the Act), the term of protection is governed, where applicable, by the European Communities (Term of Protection of Copyright) Regulations 1995 ("the Regulations").

Article 1 (1) is implemented in the Act in S. 24: "The copyright in a literary, dramatic, musical or artistic work, or an original database shall expire 70 years after the death of the author, irrespective of the date on which the work is first lawfully made available to the public".

The Article was implemented in the Regulations by providing that notwithstanding the relevant provisions of the Copyright Act 1963, "...the term of copyright subsisting in a literary, dramatic, musical or artistic work shall be the lifetime of the author of the work and a period of seventy years after the author's death, irrespective of the date when the work is published or otherwise lawfully made available to the public". [Regulation 3].

2. How have the exceptions of Article 1 of the Term Directive (Directive 2006/116/EC) in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

For works of joint authorship the Act provides that term of protection is 70 years from the death of the last surviving author. If the identity of any of the joint authors is not known, the term is 70 years from the death of the last of the joint owners whose identity is known. [S. 32(4)]. There was no special provision for such works in the Regulations, the term being simply 70 years after the author’s death.

Irish legislation does not use the term "collective works". The Act protects compilations as databases, defined as "a collection of independent works, data or other materials, arranged in a systematic or methodical way and individually accessible by any means but excludes computer programs used in the making or operation of a database" [S.2 of the Act]. The term "original database" means "a database in any form which by reason of the selection or arrangement of its contents constitutes the original intellectual creation of the author". There was no special provision in the Regulations, the term being simply 70 years pma, in so far as copyright subsisted in the compilation prior to the Act.

The term of protection of anonymous and pseudonymous works is 70 years after publication [S.24 (2) of the Act; Art. 4(1) of the Regulations]. If the pseudonym leaves no doubt as to the identity of the author or the identity becomes known, the term becomes 70 years pma [S.24(3) the Act; Art 4(2) the Regulations].

For works published in volumes, parts, instalments, issues or episodes, the Act provides that copyright shall subsist in respect of each separate item (S. 31). The Regulations contained no special provision.

In so far as Article 1(6) of the Directive is concerned, Regulation 5 provided that notwithstanding various provisions in the 1963 Act, "where the term of a literary, dramatic, musical or artistic work is not calculated from the death of the author or authors of the work, and the work has not been published or otherwise lawfully made available to the public within 70 years of its creation the protection shall terminate."

This provision is contained in the Act, in almost identical words, at S.33.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? Are co-written musical works considered to be works of joint authorship or collective works? What about cinematographic or audiovisual works? Can you think of other examples of works of joint authorship, collective works or compilations in your national act? Could you please cite the relevant provisions of your national act?

The Act defines a work of joint authorship as "a work produced by the collaboration of two or more authors in which the contribution of each author is not distinct from that or the other author or authors" [S. 22(1)]. A film is a work of joint authorship unless the producer and principal director are the same person [S.22(2)]. A broadcast is a work of joint authorship if more than one person makes it, and the contributions are not distinct from each other (S 22(3)). There was no definition in the Regulations. As to collective works and compilations, see point 2 above. There are no special provisions relating to co-written musical works.

As to cinematographic or audiovisual works, the Act does not use either term. Copyright in a “film” is protected for a term of 70 years after the death of the last of the following persons: principal director, author of the screenplay,
author of the dialogue, author of music specially composed [S. 25(1)]. However, where a film is first published during the period of 70 years following the death of the last of these, the term is 70 years after such publication [S.25(2)]. The Regulations provided that copyright in a “cinematographic film” should subsist for 70 years after the death of the last of the same designated persons specified above [Reg. 6].

4. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

Yes, a legal person can be an original author. There are no special provisions governing the term of protection when this occurs.

5. How are cinematographic or audiovisual works defined in your national legislation? Are other co-authors assigned to such a work, other than the principle director in accordance with Article 2 of the Term Directive? In whom is copyright of such a work vested in your national legislation (please see Article 14bis (2) Berne Convention)?

The term “film” is defined in the Act as “a fixation on any medium from which a moving image may, by any means, be produced, perceived or communicated through a device” [S.2]. The author of a film means the producer and the principal director [S 21 (b)]. There was no definition in the Regulations.

6. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation and, if so, what is the term of protection? Did situations corresponding to that described in Article 3(2) of the consolidated version of the Term Directive, involving phonograms that were not afforded protection under the Directive 93/98/EEC, but would have qualified under Directive 2001/29/EEC, arise in your jurisdiction? Was Article 3(2) of the consolidated version of the Term Directive implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Yes, Article 3 of the Term Directive has been implemented.

In so far as performances are concerned, S. 291 of the Act provides that performances are protected for 50 years from the end of the calendar year in which either the performance takes place, or where, within that period a recording of the performance is first lawfully published. There was no provision in the Regulations. Performances did not enjoy a term of copyright protection prior to January 1,2001. Where producers of phonograms are concerned, S. 26 of the Act provides that copyright in a sound recording shall expire either 50 years after the sound recording is made, or where it is first lawfully published during that period, 50 years after the date of such publication. There was a similar provision at Regulation 7(1)- (2).

The term of protection of the producer of the first fixation of a film is as described in point 3 above. The term “film” is defined as described in point 5 above.

By S. 27 of the Act, copyright in a broadcast expires 50 years after the broadcast is first lawfully transmitted. The Regulations contained a similar provision, at Reg. 7(3).

7. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation and, if so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes. S. 34 of the Act provides that "any person who, after the expiration of the copyright in a work, lawfully makes available to the public for the first time a work which was not previously so made available, shall benefit from rights equivalent to the rights of an author, other than the moral rights, for 25 years from the date on which the work is first lawfully made available to the public." A similar provision was contained at Regulation 8.

8. Has Article 5 of the Term Directive on critical and scientific publications been implemented in your national legislation and, if so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No. Irish law has not implemented Article 5 of the Term Directive.

9. Has Article 6 of the Term Directive on the protection of photographs been implemented in your national legislation and, if so, what is the term of protection? Could you please cite the relevant provisions of your national act? Are non-original photographs protected under your national legislation in addition to original ones?

Photographs are protected under the Act as a sub-category of “artistic work” provided they are original. The term “original” is not defined. [S. 17(a), with the definition of “artistic work” at S. 2]. There was no provision in the Regulations.

10. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to
the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Article 7 of the Directive was implemented in the Regulations in provisions closely modelled on Article 7(1) and 7(2), contained at Regulation 10(1) – 11(2). The Act provides for the extension of national treatment to nationals of “convention countries” by Governmental Order, and for extension to nationals of non-convention countries based on a consideration whether “adequate protection” is given to owners of copyright under Irish law by the law of the non-convention country [S. 188-190] The Third Schedule to the Act lists the relevant Conventions.

11. Are moral rights in your country perpetual? (Please see Article 9 Term Directive.) Could you please cite the relevant provision of your national act?

Moral rights are not perpetual. Irish law did not recognise moral rights, as such, until the introduction of the Act. The Act provides for the rights of paternity and integrity, false attribution, and a right of privacy in photographs and films commissioned for private and domestic purposes. The rights are co-terminus with the copyright term. [S. 115 (1), save that the right of false attribution subsists for 20 years after the death of the holder of the right [S. 115(2)]. There are no moral rights when the author died prior to January 1, 2011, nor in relation to a film made before the commencement of the Act [First Schedule, Part 1, S. 12].

12. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights over works in which copyright or related rights subsist being resuscitated? If so, for how long? Did your national act specify whose rights were being revived (e.g. those of the heirs of the author, the last rightholder to acquire the copyright prior to its termination through assignment or other transfer of rights, another party)? Did your national act take advantage of the latitude as to cinematographic or audiovisual works provided by Article 10 (4) Term Directive? Please cite the relevant provisions of your national act.

The Copyright Act 1963 was amended on July 1, 1995, on the introduction of the Regulations. The Regulations contained a number of provisions designed to deal with the transition from the previous general 50-year term to the new 70-year term. The cases in which copyright was revived included the works of James Joyce.

The principal provisions of the Regulations relating to revived copyright are set out below:

**Regulation 13(1):**

13. (1) Where the term of copyright in any literary, dramatic, musical or artistic work, broadcast, sound recording or cinematograph film has, under the Act of 1963, expired prior to the 1st day of July, 1995, and is revived by virtue of these Regulations or where the term of such copyright has not expired and is extended by virtue of these Regulations, the owner of the copyright as so revived or extended shall be the author, broadcasting organisation, maker of the recording or maker of the film, as the case may be, or, in the event that that person is deceased, his or her legal personal representative or if the said person is not a natural person, any successor-in-title of it.

**Regulation 14(1) and (2):**

(1) Notwithstanding Regulation 13 of these Regulations:

(a) any person who, before the 29th day of October, 1993, undertook the exploitation of a literary, dramatic, musical or artistic work, broadcast, sound recording or cinematograph film or made preparations of a substantial nature to exploit such a work or other matter, at a time when such work or other matter was not protected under the Act of 1963, shall not be liable to the owner of the copyright in such work or other matter as revived by virtue of these Regulations for such exploitation or, as the case may be, any exploitation which he or she proceeds to make of such work or other matter on foot of preparations as aforesaid and may, in either case, continue such exploitation for the duration of the term of the copyright as so revived without any liability to the said owner.

(b) any person who, between the 29th day of October, 1993, and the 1st day of July, 1995, undertook the exploitation of a literary, dramatic, musical or artistic work, broadcast, sound recording or cinematograph film or made preparations of a substantial nature to exploit such a work or other matter, at a time when such work or other matter was not protected under the Act of 1963, and can prove that he or she was not aware, and had no reasonable grounds for suspecting, that copyright in the work or other matter concerned would be revived by virtue of these Regulations or any other enactment shall not be liable to the owner of the copyright in such work or other matter as revived by virtue of these Regulations for such exploitation or, as the case may be, any exploitation which he or she proceeds to make of such work or other matter on foot of preparations as aforesaid and may, in either case, continue such exploitation for the duration of the term of the copyright as so revived without any liability to the said owner.
Where a person has acquired (whether before or after the commencement of these Regulations) rights in a work or other matter referred to in paragraph (1) of this Regulation from a person exploiting that work or other matter and copyright in that work or other matter has been revived by virtue of these Regulations, the first-mentioned person shall not be liable to the owner of the copyright as so revived for any exploitation by him or her of the rights acquired if the second-mentioned person is not liable, by virtue of the said paragraph, to the said owner for the exploitation by that second-mentioned person of the work or other matter.

There is an important transitional provision contained at Regulation 15, implementing Article 10(1) of the Directive. It states “Nothing in these Regulations shall be construed as having the effect of shortening in the State a term of protection which is longer than the corresponding term provided for in these Regulations where such a term of protection is already running on the 1st day of July 1995.”

On 1st July 1995, as already mentioned, the applicable legislation was the Copyright Act 1963. S.8 of that Act provided that “copyright shall subsist in every original literary, dramatic or musical work which is unpublished and of which the author was a qualified person....”. S. 5(a) of the Act provided that if before the death of the author, the work had not been published, performed in public, offered for sale to the public or broadcast, “the copyright shall continue to subsist for a period of fifty years from the end of the year during which the first of those acts to be done is done.”

The effect of these provisions was that copyright in the specified unpublished works was potentially perpetual. It commenced on creation of the work, and continued to subsist until 50 years after the happening of one of the acts of exploitation mentioned. This term can clearly extend beyond the corresponding term in the Regulations.

Because S. 9 of the First Schedule to the Act preserves the effect of the Regulations in relation to works enjoying copyright at its commencement, it appears that the potentially perpetual term continues to apply to literary, dramatic and musical works which at the date of the author’s death have not been exploited in one of the ways specified in S. 5(a) of the 1963 Act. It is not clear that this was intended by the draftsman of the 2000 Act.

In so far as Article 10(4) of the Directive is concerned, it was not until commencement of the Act on 1 January, 2001 that the principal director was designated an “author” of the film.

In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/the State via escheat etc.). Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

There is no distinction in Irish law similar to that in Romanian law.

In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

There are no exceptions in Irish law similar to those mentioned in French law.

Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

Yes. See point 12 above.

Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

None occur to me.

There is a similar provision, at S 9(6) relating to engravings but artistic works are not otherwise affected.
15. Italy

1. How have the exceptions of Article 1 of the Term Directive (Directive 2006/116/EC) in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Please cite the relevant provisions of your national act.

In Italian Copyright Act, according to the Term Directive, in the case of a work of joint authorship (article 10 and article 26 paragraph 1 Copyright Act), the term (The rights of an author shall run for the life of the author and for 70 years after his death) shall be calculated from the death of the last surviving author.

In respect of collective works (article 3 and article 26 paragraph 2 Copyright Act), the term is not calculated from the death of the author or authors but from the date the collective work have been made available to the public. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately (article 30 Copyright Act).

In the case of anonymous and pseudonymous works (article 27 Copyright Act) the term of protection shall run for 70 years after the work is lawfully made available to the public.

However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall run for the life of the author and for 70 years after his death.

2. Is there a distinction made between works of joint authorship, collective works and compilations in your national legislation? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? Are co-written musical works considered to be works of joint authorship or collective works? Please cite the relevant provisions of your national act.

In Italian copyright law there is a distinction made between works of joint authorship, and collective works. Collective works are considered those formed by the assembling of works or parts of works (article 3 Copyright Statute).

Article 26 paragraph 2 of the Italian Copyright Statute regulate collective works stating the term is calculated from the date the collective work have been made available to the public. The duration of the rights is seventy years. Article 30 of the Copyright Statute provides for an exception for magazines, newspapers and other periodical works. In this case when parts or volumes of the same work are published separately, at different times, the duration of the rights of exploitation is running for each party or each volume since the year of publication. If it is a periodical collective work, as magazine or newspaper, the rights duration is also calculated from the end of each year of the publication of individual magazine.

The joint authorship are regulated by Article 10 Italian Copyright Statute. If the work was created with the indisputable and inseparable contributions of several persons, the copyright belongs in common to all co-authors. The undivided shares of equal value are presumed, unless evidence in writing that they agree otherwise. Apply to matters not provided for the provisions governing the communion regulated by civil code. The moral law can always be exercised individually by each co-author and the work can not be published, if unpublished, nor can it be modified or used in a different form from that of first publication, without the consent of all co-authors.

However, in case of unjustified refusal of one or more co-authors, publication, modification or new use for the work may be authorized by the court.

Article 33 and following provide for musical works (lyric, operetta, musical composition, ballet) stating these works are of joint authorship. Rights of exploitation, however, belong to the author of the musical. However the parties retain the rights deriving from communion.

3. Are cinematographic or audiovisual works defined in your national legislation? Are other co-authors assigned to such a work, other than the principle director in accordance with Article 2 of the Term Directive? In whom is copyright in such a work vested in your national legislation?

Cinematographic works are clearly defined and governed in Italian legislation. To such a work are assigned as co-authors the subject author, film script author, music author and artistic director. Right of economic exploitation is vested in the producer of the cinematographic work.

4. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? Please cite the relevant provisions of your national act.

Article 85 Italian Copyright Statute, according to article 3 of the Term Directive, establishes the term of protection of related rights shall expire 50 years after the date of execution, performance or recitation. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.
5. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? Please cite the relevant provisions of your national act.

**Article 85 ter Italian Copyright Statute** contains the provision of **Article 4 of the Term Directive**. Italian rule states moreover the moral rights are retained by author.

6. Has Article 5 of the Term Directive on critical and scientific publications been implemented in your national legislation and, if so, what is the term of protection? Please cite the relevant provisions of your national act.

The provision of **Article 5 of the Term Directive** is contained in **Article 85 quater of the Italian Copyright Statute**. The economic copyright rights in Italian law expire 20 years after the first lawful publication, in any form or by any means done.

7. Has Article 6 of the Term Directive on the protection of photographs been implemented in your national legislation? Are non-original photographs protected under your national legislation in addition to original ones and if so, what is the term of protection? Please cite the relevant provisions of your national act.

Regarding to non—original photographs, Italian law - article 87 of the Copyright Statutes - provides for various types of photographs.

- a. photos or images of people or of aspects, elements or facts of natural life;
- b. photos or images of people or of aspects, elements or facts of social life;
- c. photos of art;
- d. frames of films.

The protection of these types of photos expire 20 years after production of the photo that shall indicate the following information (article 90 Copyright Statute):

- the photographer's name or company from which depends the photographer or the client;
- the production date of photography;
- the author name of the artwork photographed.

If such claims are not reported, their reproduction is not considered unfair and are not due compensation for. Original photographs are protected as required by Term Directive.

8. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Please cite the relevant provisions of your national act. Do you know of any international obligations undertaken by your country prior to the adoption of the Term Directive granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

**Articles 185 - 189 governing the application area of the Copyright Act**. In Italian copyright law is in use the reciprocity principle and in any case the duration of protection of the foreign work can not exceed the period allowed by the State of which the author is a national. Safe the international obligations.

9. Are moral rights in your country perpetual? (Please see Article 9 Term Directive.) Please cite the relevant provisions of your national act.

In Italian Copyright Statute moral rights are perpetual and inalienable. The relevant provision of Italian Act are Articolos: 20 – 24.

10. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights over works in which copyright or related rights subsist being resuscitated? If so, for how long? Did your national act take advantage of the latitude as to cinematographic or audiovisual works provided by Article 10 (4) Term Directive? Please cite the relevant provisions of your national act.

The Directive is not implemented: the Italian Copyright Act is already in compliance with the Directive.

11. Does the term of protection vary according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/ issue and other blood relatives/ the State via escheat etc.) in your national jurisdiction? If so, could you please cite the relevant provisions of your national act?

No, they don't.

12. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Please cite the relevant provisions of your national act.

See answer number 10.
13. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

I cannot think noteworthy divergence of Italian copyright act involving the term of protection of works of copyright and related rights form the standards set out in the Term Directive.
16. Latvia

Author: Inga Kvesko

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

Latvian Copyright Act (in force as of May 11, 2000; adopted on April 6, 2000), hereinafter - LCA.

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The exceptions are mentioned in Article (Section) 37 LCA:

(1) Copyright to audio-visual works shall be in effect for 70 years after the death of the last of the following persons:
1) the director;
2) the author of the script;
3) the author of the dialogue; and
4) the author of a musical work created for an audio-visual work.

(2) Copyright to a work that has legally become available to the public anonymously or under a pseudonym shall be in effect for 70 years from the moment when it has legally become available to the public. If during the time referred to the author of a work whose work has legally become available to the public anonymously or under a pseudonym reveals his or her identity, or if there is no doubt about the identity, Section 36, Paragraph one* of this Law shall apply.

(3) Copyright to a work created by co-authors shall be in effect for the duration of the lives of all the co-authors and for 70 years after the death of the last surviving co-author.

(4) As to authors, whose works were prohibited in Latvia or the use of which was restricted from June 1940 to May 1990, the years of prohibition or restriction shall be excluded from the term of the copyright.

(5) Copyright to works, whose term of copyright begins at the moment of legal publication and which are published in volumes, parts, instalments or sections, shall be in force separately for each volume, part, instalment or section.

(6) A work, the term of protection of which is not calculated from the moment of the death of the author or authors, protection shall expire if within a period of 70 years after the creation of such a work it has lawfully not become accessible to the public.

(7) Any person, who after expiration of a copyright lawfully publishes or communicates to the public a previously unpublished work, shall acquire rights which are equivalent to the economic rights of an author and shall be in effect for 25 years from the first publication or the communicating to the public of the work.

* Article (Section) 36, paragraph 1 LCA:

Copyright shall be in effect for the entire lifetime of an author and for 70 years after the death of an author.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

As a basic principle, the LCA distinguishes copyright protected works regardless of the manner or form of expression (Article 4) and non-protected works (Article 6). Moreover, Article 5, paragraph 1 LCA names protected derivative works amongst which are mentioned collections of works (encyclopaedias, anthologies, atlases and similar collections of works), as well as databases and other compiled works which, in terms of selection of materials or arrangement, are the result of creative activity. Thus, the basic rules of protection terms also from the type of work aspect are set in Articles 36 and 37 LCA (see above).

A clarification concerning joint authorship is given in Article 37, paragraph 3 LCA (see above) and Article 9 LCA (Co-authors):

(1) If a work has two or more authors and the individual contribution of each author to the creation of the work cannot be segregated as a separate work, copyright to the work shall belong to all the co-authors jointly.
(2) If the individual contribution of each author is a separate work, each author shall have copyright to his or her individual contribution as a separate work.

Thus, yes, the joint authorship presupposes that the contributions of several authors are inseparable.

As regards compilations, an explanation is given in Article 10 LCA:

(1) A compiler, the result of whose creative activity is the selection or arrangement of material, shall have copyright to the compilation of the composite work.

(2) Authors of works included in collections or other composite works shall each retain copyright to their respective work and may independently use it also separate from the collection or composite work.

(3) The copyright of a compiler shall not impose restrictions on other persons to independently make the selection and arrangement of the same works and material.

Finally, as regards such collective works as audio-visual works, a specification is given in Article 37, paragraph 1 LCA (see above) and in Article 11 LCA:

(3) The authors of an audio-visual work, except the author of a musical work created for the audio-visual work, shall each retain moral rights to their work, but may not use it independently of the whole of the audio-visual work, if it is not specified otherwise by contract with the producer. The author of a musical work shall retain both the moral rights of an author and the economic rights of an author. The author of a script may use his or her work in a different type of work, unless specified otherwise by contract.

Thus, taking into account the above-mentioned LCA provisions, one can find a distinction among works of joint authorship, collective works and compilations.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

According to Article 9 LCA (see above) it depends whether contributions of several authors are inseparable or not for a specific co-written musical work, e.g., whether a musical work is with or without lyrics.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

No, according to Article 1, point 1 LCA the author is a natural person, as a result of whose creative activities a concrete work has been created.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Yes, according to Article 11 LCA:

(1) The authors of an audio-visual work shall be the director, author of the script, author of the dialogue, author of a musical work (with or without lyrics) created for the audio-visual work, as well as other persons who, as a result of their creative activity, have contributed to the making of the work.

(2) The producer of a work may not be recognised as an author of an audio-visual work.

(3) The authors of an audio-visual work, except the author of a musical work created for the audio-visual work, shall each retain moral rights to their work, but may not use it independently of the whole of the audio-visual work, if it is not specified otherwise by contract with the producer. The author of a musical work shall retain both the moral rights of an author and the economic rights of an author. The author of a script may use his or her work in a different type of work, unless specified otherwise by contract.

The protection term for audio-visual works is set in Article 37, paragraph 1 LCA (see above).

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No, according to Article 6, point 1 LCA regulatory enactments and administrative rulings, other documents issued by the State and Local Governments and adjudications of courts (laws, court judgements, decisions and
other official documents), as well as official translations of such texts and official consolidated versions are not protected by copyright.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, it has been implemented in Article (Section) 55 LCA according to which:

(1) The rights of performers shall be in effect for 50 years from the first performance. If during this time a fixation of the performance is lawfully published or communicated to the public, the period of protection shall be in effect 50 years from the day of such publication or communication to the public, depending on which action was the first. The moral rights of performers shall be in effect as long as the economic rights are in effect.

(2) The rights of phonogram producers and film producers shall be in effect for 50 years from when the fixation was made. If during this time a phonogram or film has been lawfully published or communicated to the public, the period of protection shall be 50 years from the day of such publication or communication to the public, depending on which action was the first.

(3) The rights of broadcasting organisations shall be in effect for 50 years from the first transmission of a broadcast.

(31) The terms of protection specified in Paragraphs one, two and three of this Section shall also be in force if the rightholders are not citizens of the European Union but at least one Member State of the European Union ensures protection to them. Such term of protection shall expire on the date when the protection granted by the state whose citizen the rightholder is shall end, but shall not be longer than the term specified in Paragraphs one, two and three of this Section, unless otherwise provided by international agreements binding for Latvia.

(4) The term for neighbouring rights provided for in this Section shall begin on 1 January of the year following the year in which the rights were created (legal fact) and shall end on 31 December of the year in which the time referred to in this Section ends.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, (as it is already mentioned above) it has been implemented in Article 37, paragraph 7 LCA according to which:

Any person, who after expiration of a copyright lawfully publishes or communicates to the public a previously unpublished work, shall acquire rights which are equivalent to the economic rights of an author and shall be in effect for 25 years from the first publication or the communicating to the public of the work.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

According to Article 1, point 2 LCA a copyright protected work is a work, which is the results of an author’s creative activities in the literary, scientific or artistic domain, irrespective of the mode or form of its expression and its value.

Thus, if such works correspond to the above mentioned definition of work then they are protected under the LCA and the general term of protection set in Article 36 LCA is applied unless they fall under the specific term of protection set in Article 37 LCA (please refer to the answer provided for the question no.2 above).

However, Article 6 LCA clearly states that ideas, methods, processes and mathematical concepts are among non-protected works.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

There is no such regulation in Latvia as, e.g., in Germany.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

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According to Article (Section) 5, paragraph 1, point 2 LCA without prejudice to the rights of authors as to the original work, such derivative works as databases and other compiled works which, in terms of selection of materials or arrangement, are the result of creative activity, shall also be protected.

According to Article 5, paragraph 2 LCA derived works shall be protected irrespective of whether the works from which they are derived or which are included within them can have copyright protection applied to them.

However, according to the paragraph 3 of the same Article databases the creation, obtaining, verification or presentation of which has required a substantial qualitative or quantitative investment (financial resources or consumption of time and energy), whether or not they are the objects of copyright shall be protected pursuant to Chapter IX of the LCA.

Consequently, in Chapter IX you can find the following:

**Section (Article) 57. Rights of a Maker of a Database**

1. As the maker of such database, in the creation, verification, and formation of which there has been substantial qualitative or quantitative investment (Section 5, Paragraph two) shall be recognised the natural or legal person which has undertaken initiative and the investment risk regarding the making of a database.
2. The maker of a database has the right to prevent the following regarding the entire contents of the database or such parts of which may be qualitatively or quantitatively regarded as substantial:
   1) extraction, which means the permanent or short-term (temporary) transfer of all or a substantial part of the contents of a database to another location by any means or in any form; and
   2) re-use, which means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by rental, by providing on-line or other forms of transmission.

For such rights the specific protection term set in Article (Section) 60 LCA, under Chapter IX is applied. Namely:

**Section (Article) 60. Term of Rights of Protection of Databases**

1. The rights specified in Section 57, Paragraph two of this Law shall be in effect for 15 years from the day when the formation of a database was completed. The term shall begin on 1 January of the year following the day of the formation of the database.
2. If a database has been made available to the public before the expiration of the term specified in Paragraph one of this Section, the term of protection shall begin on 1 January of the year following the day when the database was first made available to the public and shall be in effect for 15 years.
3. If any changes that may be regarded as qualitatively or quantitatively substantial are made in the contents of the database, as well changes in it resulting from the accumulation of successive additions, deletions or changes as a result of which it may be considered that a new investment which may be regarded as qualitatively or quantitatively substantial, has been made, such database has the right to its own term of protection, and the provisions of Paragraphs one and two of this Section shall apply.

Thus, if it concerns specific rights of a database maker (Article 57, paragraph 2 LCA) the specific term of protection thereof set in Article 60 LCA is applied. But, if it concerns copyright, presumably, the general term of protection set in Articles 36 and 37 LCA (see above the answer to the question no.2) is applied.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

As to the copyright:

**Section (Article) 36. General Provisions Regarding the Term of Copyright**

1. Copyright shall be in effect for the entire lifetime of an author and for 70 years after the death of an author, except for the cases specified in Section 37 of this Law.
If the country in which the work has been created is not a Member State of the European Union according to Article 5, Paragraph 4 of the Berne Convention for the Protection of Literary and Artistic Works and the author of the work is not a citizen of the European Union, the term of protection of this work in the European Union shall expire on the date of expiry of the protection granted by the country of origin, but it shall not exceed the term specified in Paragraph one of this Section. As to the neighbouring rights, see answer to the question no.8 above.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

According to Article (Section) 14 LCA:

(1) The author of a work has the inalienable moral rights of an author to the following:

1) authorship – the right to be recognised as the author;
2) a decision whether and when the work will be disclosed;
3) the revocation of a work – the right to request that the use of a work be discontinued, with the provision that the author compensate the losses which have been incurred by the user due to the discontinuation;
4) name – the right to require his or her name to be appropriately indicated on all copies and at any public event associated with his or her work, or to require the use of a pseudonym or anonymity;
5) inviolability of a work - the right to permit or prohibit the making of any transformations, changes or additions either to the work itself or to its title; and
6) legal action (also unilateral repudiation of a contract without compensation for losses) against any distortion, modification, or other transformation of his or her work, as well as against such an infringement of an author’s rights as may damage the honour or reputation of the author.

(2) None of the rights mentioned in Paragraph one of this Section may be transferred to another person during the lifetime of the author.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

Last substantive amendments in the LCA were made by the amending laws of:
- 08.02.2007. which entered into force as of 01.03.2007.
- 06.12.2007. which entered into force as of 05.01.2008.

Amongst other transitional provisions, the LCA provides for:

(in point 2) that the terms of protection of copyright and neighbouring rights provided for in this Law shall apply to all the works and objects of rights which were subject to protection on 1 July 1995 at least in one Member State of the European Union in accordance with the relevant national provisions regarding copyright and neighbouring rights.

(in point 5) that the rights of protection of a database provided for in Section 57 of this Law shall apply also to such databases the creation of which was completed not earlier than 15 years before the coming into force of this Law and which are, on the day of the coming into force of the Law, in compliance with the provisions of Section 5, Paragraph two of this Law. Protection of a database shall not restrict previously acquired rights and shall not affect contracts, which have been entered into before the coming into force of this Law (on May 11, 2000).

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

Yes, as already mentioned above, according to the Article 37, paragraph 4 LCA:

As to authors, whose works were prohibited in Latvia or the use of which was restricted from June 1940 to May 1990, the years of prohibition or restriction shall be excluded from the term of the copyright.
19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

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20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

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21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

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1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

The Law on Copyright and Related Rights (No VIII-1185, May 18, 1999).
English version (wording of 19 January 2010) is available at:

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The exceptions of Article 1 of Term Directive mainly have been transposed to the Articles 32 and 37 of the Law on Copyright and Related Rights.

Furthermore, the part 1 of the Article 32 states that in the case of anonymous and pseudonymous works, the term of protection of the authors' economic rights shall run for 70 years after the work is lawfully made available to the public. Also, the law states that if the author discloses his identity during the prescribed period, the term of protection of the author's economic rights shall run for the life of the author and for 70 years after his death.

The exception regarding collective works is established in the part 3 of the Article 32 which states that in case of collective works, the term of protection of the authors' economic rights shall run for 70 years after the work is lawfully made available to the public. Moreover, it states that, in cases where the natural persons who have created the work leave no doubt as to their identity, provisions regarding regulation on works of joint authorship is established shall apply.

The exception in relation with works published in parts, instalments, issues or episodes are implemented in the part 2 of Article 37 of The Law on Copyright and Related Rights, where it is set that in cases where a work is published in separate units (volumes, parts, issues, or episodes), the term of protection shall be calculated for each separate item from the date of its lawful publication.

In addition, it could be concluded that these provisions of the Term directive have been fully implemented in the national legislation.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

The national legislation of Lithuania does not provide the direct definitions of the terms: works of joint authorship, collective works and compilations. However, the distinction is made in regulations describing the owners of copyright. The part 1 of the Article 7 of The Law on Copyright and Related Rights states that when a work is created by two or more natural persons in joint creative endeavour, they shall be regarded as co-authors, irrespective of whether such a work constitutes a single unitary whole, or consists of parts, each of which has an autonomous meaning. Moreover, this Article sets that a part of a joint work shall be considered as having an autonomous meaning if it may be used independently of the other parts of that work, though contributions are not necessarily inseparable.

The Article 8 of the Law on Copyright and Related Rights describes copyright in collective works. According to this Article an author's economic rights in collective works (such as encyclopaedias, encyclopaedic dictionaries, periodical scientific collections, newspapers, journals, and other collective works) shall vest in the natural or legal person on the initiative and under the direction of whom the work has been created. Also, this Article states that the authors of the works incorporated in collective works shall retain exclusive rights to exploit their works independently of the use of the collective work, unless otherwise provided for by an agreement.

However, the regulations regarding compilations are not established in separate Article, although according the part 3 of Article 4 of The Law on Copyright and Related Rights collections of works or compilations of data, databases (in machine readable form or other form), which, by reason of the selection or arrangement of their contents constitute of author's intellectual creations, are regarded as the subject matter of copyright.
Regarding the terms of protection of such works please refer to answer No 2.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

There are no specific rules related directly to co-written musical works. Generally as created jointly or in collaboration with other authors they are considered to be the works of joint authorship. It could be mentioned that in cases where authors have no primary intention or agreement to create joint work – the joint authorship may be questioned. Furthermore, if the part of the joint work includes work which was incorporated without a consent of an author – performed actions could be even considered as the breach of the authors’ rights.

In addition, some of examples of works described in the Question 3 could be provided. An example of a work of joint authorship could be a song, a film, book created by co-authors. An example of a collective work could be encyclopaedia, encyclopaedic dictionary, periodical scientific collection, newspapers, journals and etc. An example of a compilation could be an album of the paintings, a meal recipe book and etc.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

The Article 6 of the Law on Copyright and Related Rights states that the author shall be a natural person who has created a work. However, legal person may possess the author’s exclusive economic rights. It must be noticed, that in such cases calculation of copyright protection terms remains the same and general rules shall be applied.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

The Article 11 of the Law on Copyright and Related Rights sets that Copyright in audiovisual works shall be enjoyed by their co-authors, i.e. the director, author of the screenplay, author of the dialogue, art director, cameraman and composer of music (with or without lyrics), specifically created for use in this audiovisual work. Hence co-authors according to the national legislation are: author of the screenplay, author of the dialogue, art director, cameraman and composer of music (with or without lyrics), specifically created for use in this audiovisual work.

The term regarding protection of such works is established by the part 4 of Article 34 of the Law on Copyright and Related Rights where is stated that the term of protection of authors’ economic rights in an audiovisual work shall extend over the life of the principal director, author of the screenplay, author of the dialogue, art director, director of photography and the composer of music specifically created for the audiovisual work, and for 70 years after the death of the last of them to survive.

In addition, it must be mentioned that this national provision deviates from the Article 2 paragraph 2 of Term directive, because extra subjects were incorporated in the national legislation (i.e. art director and director of photography).

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

According to the national legislation, the official documents are not protected by copyright. The part 2 of Article 5 of the Law on Copyright and Related Rights sets that copyright shall not apply to legal acts, official documents texts of administrative, legal or regulative nature (decisions, rulings, regulations, norms, territorial planning and other official documents), as well as their official translations.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The Article 3 of the Term Directive has been transposed to the national legislation through regulations of the Article 59 of the Law on Copyright and Related Right. The terms of protection set in the parts from 1 to 4 of this Article are the same as set in the Term Directive:

• The rights of performers shall run for 50 years after the date of the performance. If a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights of performers shall run for fifty years from the date of the first such publication or the first such communication to the public, whichever is the earlier.
• The rights of producers of phonograms shall run for 50 years after the fixation is made. If the phonogram is lawfully published during this period, the rights shall expire 50 years from the date of the first such publication. If the phonogram is not lawfully published within 50 years after the fixation is made, however, it is lawfully communicated to the public within the said period, the rights shall expire 50 years from the date of the lawful communication to the public of the phonogram.

• The rights of broadcasting organisations shall run for 50 years after the first transmission of a broadcast, irrespective of whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

• The rights of producers of the first fixation of an audiovisual work (film) shall run for 50 years after the fixation is made. If the audiovisual work (film) is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The Article 36 of the Law on Copyright and Related Right implements the provisions Article 4 of the Term Directive on the protection of previously unpublished works. It states, that A natural or legal person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the exclusive economic rights in the work as the author. Moreover, according to this article the duration of these rights shall run for 25 years from the date of the first lawful publication of the work or the first lawful communication to the public of the work.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

National legislation does not provide any specific regulations regarding critical and scientific publications of works which have come into the public domain, hence general rules shall be applied.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

According to the part 2 of Article 4 of the Law on Copyright and Related Right photographic works and other works created by a process analogous to photography shall be the subject matter of copyright. The term of “Photographic work” shall mean an image produced on surfaces sensitive to light by means of light or any other radiation the composition, selection or way of capturing the chosen objects of which show originality, irrespective of the technology (chemical, electronic, etc.) of such fixation. It shall be noticed that in connection with the implementation of Term Directive no specific regulations on non-original photographs have been passed. However, the Supreme Court of Lithuania in one recent case (2010 case T.V. v. AB “Žemprojektas” No. 3K3-536/2010) has stated, that the requirements of the originality for the photographs must be objective and special creativity, singularity and individuality conditions are not necessary as the conditions for the protection. The main requirement for the photograph to be original is to constitute the intelectual work of a natural person.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

The Article 64 of the Law on Copyright and Related Right states that the rights of makers of databases shall run for 15 years from the date of completion of the making of the database. If the database is made available to the public in whatever manner within this period, the rights of the maker of the database shall expire 15 years after the date of its making available to the public. Moreover it is set that any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any changes resulting from the accumulation of successive additions, deletions or alterations, which may be considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection. It may be mentioned that the term of protection of a database shall be calculated from the first day of January of the year following the date of completion or the date when the database was first made available to the public.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

There are no legal provisions or regulations regarding additional categories of works other than mentioned above.
14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

There are no specific legal provisions transposing the provisions of the Article 7 of the Term Directive, although according to the understanding of leading scholars of Lithuania rules of the Term Directive should be applicable for the calculation of copyright protection in relevant situations. Moreover, it could be mentioned that according to the part 3 of the Article 3 the Law on Copyright and Related Right this Law shall also apply to authors, owners of related rights and makers of databases whose rights shall be protected in the Republic of Lithuania in accordance with the international agreements ratified by the Republic of Lithuania, and other legal acts binding on the Republic of Lithuania according to its international obligations. Furthermore, it must be noticed, that Lithuania has ratified the Berne Convention hence the part 8 Article of thereof may be applicable. It states that in any case, the term of protection shall be governed by the legislation of the country where protection is claimed, however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

To our knowledge Lithuania has not accepted any international obligations granting a longer term of protection.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

According to the part 2 of Article 34 of the Law on Copyright and Related Right the protection of the author’s moral rights shall be of unlimited duration.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The Law on Copyright and Related Right was passed in 18 May 1999. This law generally was in line with the provisions of the Term Directive and in accordance with the implementation of the Term Directive couple amendments were made in 20 July 2000 and 5 March 2003 (a new wording of the Law).

Transitional provisions were set in the Article 72 of the Law on Copyright and Related Right (version of 18 May 1999). These provisions stated that the Law on Copyright and Related Right shall apply to authors and owners of related rights if at the moment of the entry into force thereof the term of protection of their rights in literary, scientific and artistic works or objects of related rights, which were effective before the entry into force of this Law, has not expired. Hence the term of protection of effective rights was extended from 50 (which was set by the provision of Civil Code) to 70 years only to those rights which were effective at the date of the adoption of this the Law on Copyright and Related Right. Moreover, it was set that any acts done before the entry into force of this Law and not infringing the provisions of the relevant legislation in force at that time shall not constitute the infringement of rights and shall not give rise to the right to obtain remuneration granted under this Law. We are not aware of any lawsuits in national courts concerning resuscitation of the of previously expired rights and the Law on Copyright and Related Right does not establish any specific regulations with regard to this issue.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/ issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

In Romanian national legislation there are no similar provisions. According to the Article 49 of the Law on Copyright and Related Rights, economic rights of authors shall be inherited by law or by testamentary succession (by will). No differences are made according to the class of the beneficiary.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No specific regulations are set forth which would be similar to the exception introduced in France. No similar additional exceptions are available.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?
Through the history of Copyright law in Lithuania the term of protection was never longer than term provided by the Term Directive (i.e. 70 years) and there were no necessity to amend national legislation shortening any term.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

Lithuania does not provide a Domaine Public Payant or an equivalent regime. After the expiry of the authors’ economic rights the use of works should done only by giving account to moral rights of authors, which are perpetual.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

Generally Lithuanian national regulations are verbatim representation of the Term Directive. Thus no special rules or provisions deviating from the Term directive are in place.
18. Luxembourg

For questions, please contact:

Office de la Propriété Intellectuelle
Ministère de l’Économie et du Commerce extérieur
19-21, boulevard Royal
L-2914 - Luxembourg
Grand-Duché de Luxembourg
Tél. : (+352) 247-84113
Fax : (+352) 22 26 60
E-mail : dpi@eco.etat.lu

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

The modified law of April 18, 2001 on copyright, related rights and databases.

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

All these exceptions already existed in the mentioned Luxembourgish law, due to the transposition of Directive 93/98/EEC (codified by the Term Directive) and Directive 2001/29/EC, i.e. :

- **Article 9 (1)** for joint authorship (with separable contributions): copyright on each contribution expires 70 years after the death of its respective author;
- **Article 9 (2)** for collaborative works with inseparable contributions: copyright expires 70 years after the death of the last surviving author;
- **Article 9 (3)** for anonymous, pseudonymous works and “œuvres dirigées”: copyright expires 70 years after the making accessible to public. In case of established identity of the author during this period, the author or his stakeholders can claim copyright protection for the usual period of 70 years after the author’s death;
- **Article 9 (3)** for works published in parts, instalments, issues or episodes: the term of protection runs for each item separately ongoing from the making accessible to the public.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

There is a distinction made between works where the contributions by different authors can be separated and works where the contributions cannot be separated. In the first case, each co-author can exploit his personal contribution independently as long as this exploitation is not operated with that of another co-author, nor does harm to the collective work [**Article 5 (3)**]. The term of protection for each contribution expires 70 years after the death of its respective author. In case of a work of inseparable collaboration, the term of protection ends 70 years after the death of the last surviving author, and this work can only be exploited in common [**Article 9(2)**].

Compilations are dealt with as databases which are defined as collections or compilations of works or other independent elements, systematically or methodically arranged and individually accessible by electronic means or other [**Article 1 (2)**].

Whole databases, if constituting a proper intellectual creation to their author, in particular due to the choice or disposition of their elements, can be protected as works of copyright with the usual protection term of 70 years after the author’s death [**Article 1 (2)**].

The investment and effort of the creation of databases can also be protected by a “sui generis” right which can be complementary to copyright protection. This “sui generis” protection requires an important qualitative or quantitative investment in the creation process [**Article 67 (3)**].

The protection period awarded by this “sui generis” right is 15 years, it covers exclusively patrimonial rights and is calculated from January 1st of the year following the completion of the database, or, if it has been made available to the public within that timeframe, calculated from January 1st of the year following its making available to the public [**Article 69**].

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?
There is no special disposition concerning musical works in the national law. The principle is the same as explained under the previous question n°3, meaning that the point is to determine whether the contributions can be individualised and separated or not.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

A work of copyright is imprinted by the personality of its author, whose decisions, choices, ideas, initiatives have created the work. Due to the lack of proper personality and character, a legal person cannot be original author of a work of copyright in Luxembourg.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principal director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

According to Article 21 of the modified law of April 18, 2001 on copyright, related rights and databases, the authors of a cinematographic or audiovisual work are the producer and the principal director. The term of protection for such works is 70 years after the death of the last of the survivor of the following persons: the principal director, the authors of the film script, of the dialogues and of the musical compositions with or without words, especially created for the use in the work, and independently whether they are co-authors or not [Article 9 (2)].

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Official documents and their official translation are an exception to copyright protection, but only the author is empowered to reprint or to assemble his speeches in a collection (Article 10, 8°).

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The dispositions of Article 3 of the Term Directive have been implemented in the pre-mentioned law under Article 45. The term of protection is 50 years.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Article 4 of the Directive has been transposed in identical wordings, and is referenced to as Article 9 (4) of the quoted national law.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

There is no such protection in our legislation.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

There is no such protection in our legislation.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

See answer to question n°3.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

See answer to question n°3 concerning databases’ “sui generis” right.
The author and even the owner of a portrait do not have the right to reproduce this work, to communicate it to the public or to exhibit it in public without the consent of the represented person or his/her stakeholders during a term of 20 years ongoing from the death of the represented person [Article 28].

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Article 7 of the Term Directive has been implemented under Article 71 of the mentioned law. It states that: "Non nationals benefit in Luxembourg from the warranted rights of the modified law of April 18, 2001 on copyright, related rights and databases. Concerning these non nationals, the term of those rights cannot exceed the term fixed by the Luxembourgish law. However if the country of origin of a work, within the meaning of the Berne Convention, or the country of origin of a performance/service is not a Member State of the EU nor of the WTO, and if the author or the related rights holder is not a Community national nor a WTO Member national, the term of rights protection ends at the expiry date of the protection term granted in the country of origin of the work or of the performance/service. All international conventions' effects are reserved."

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

In Luxembourg moral rights do expire at the end of the term of copyright protection. This principle is no longer explicitly mentioned in our legislation, but it is confirmed by our legal doctrine. The core of moral rights, meaning the respect of the author’s honour and reputation, does however not expire.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

There was no need to change our national law in order to bring it into conformity with the Term Directive, as all dispositions of this Directive already figured in our law due to transposition of earlier Directives 93/98/EEC and 2001/29/EC.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

There is no such distinction in our legislation.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

There is no additional exception in our legislation.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

There were no such cases in our jurisdiction.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

There is no such regime in our legislation.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.
The wording of our national law concerning the term of protection is nearly identical to the wording of the Term Directive, whose standards are all respected, and there is no noteworthy divergence.
19. Malta
Authors: Jeanine Rizzo and Krystyna Grima

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

The **Copyright Act** (Chapter 415 of the Laws of Malta)

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The above have been transposed into the Copyright Act and are regulated by **article 4**.

"(2) The terms of copyright protection conferred by this article shall be calculated according to the following table:

<table>
<thead>
<tr>
<th>Type of Work</th>
<th>Date of Expiration of Copyright</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Literary, musical or artistic works and database</td>
<td>Seventy years after the end of the year in which the author dies, irrespective of the date when the work is lawfully made available to the public</td>
</tr>
<tr>
<td>(ii) Audiovisual works</td>
<td>Seventy years after the end of the year in which the last of the following persons dies: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the audiovisual work</td>
</tr>
</tbody>
</table>

(3) In the case of an anonymous or pseudonymous literary, musical or artistic work or in the case of a collective work, the copyright in the work subsists until the end of the expiration of 70 years from the end of the year in which it was lawfully made available to the public or after the end of the year in which the work as made if it has not been made available to the public:

Provided that when the pseudonym adopted by the author leaves no doubt as to his identity or in the event of the identity of the author becoming known during the period referred to in the preceding paragraph of this sub-article or where in the case of collective works by a body of persons the natural persons who have created the work are individually identifiable in the versions of the work made available to the public the terms of copyright protection shall be calculated in accordance with the provision of paragraph (i) of the last preceding sub-article.

(4) In the case of joint authorship reference in the preceding table to the death of the author shall be deemed to refer to the joint author who dies last, whether or not he is a qualified person in terms of article 4(1).

(5) In the case of a person who for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work the copyright protection of which has expired, he shall benefit from a protection equivalent to the economic rights covered by copyright but limitedly for a period of twenty-five years from the time when the work was first lawfully published or lawfully communicated to the public.

(6) Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately."

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

The Copyright Act does distinguish between works of joint authorship, and collective works and compilations as can be seen in the articles quoted above, however the Act does not define “compilation”. A definition is given for “collective works” and “works of joint authorship”:

"collective works: a work which has been created by two or more physical persons at the initiative and under the direction of a physical person or legal entity with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing physical persons will not be indicated in the work."

"work of joint authorship: means a work produced by the collaboration of two or more authors in which the contribution of each author is not separate from the contribution of the other author or authors."

As seen in the article quoted above, there are different rules for collective works and works of joint authorship. There is no rule for compilations specifically.
4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical may fall within the scope of both “joint authorship” and “collective works,” depending on the agreement between the parties concerned. There is no hard and fast rule under Maltese Law and therefore each situation is to be dealt with according to the terms reached between the parties. For instance, if a playwright who is commissioned to write a script for a play, partakes in writing the lyrics with the lyricist, to determine whether the work was directed by a particular person/entity or whether both individuals contributed to the work in such a way that their contributions cannot be separated respectively.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

A legal person can be the original author of a work of copyright provided it is constituted, established, registered and vested with legal personality under the laws of Malta or of a State in which copyright is protected under an international agreement to which Malta is also a party (article 4(1)(b)). The term of protection shall not be affected in this respect.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Indeed they are. Article 4(2)(ii) of the Copyright Act includes, together with the principle director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the audiovisual work. The term of protection is that of seventy years after the end of the year in which the last of any of the aforementioned persons die.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, official documents fall within copyright’s reach. With respect to any work eligible for copyright and which is made under the direction of the Government of Malta/Governments of other States, international bodies or other intergovernmental organisations, these shall be covered by copyright law, to the exclusion of articles 4 (qualification for copyright protection by virtue of author) and 5 (qualification for copyright protection by reference to country where work is made or published).

Copyright thus conferred on databases or on a literary, musical or artistic work shall subsist until the end of the expiration of seventy years from the end of the year in which it was first published.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

It has indeed been implemented and this for a term of fifty years by virtue of articles 14 and 60 of the Copyright Act.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Article 4 has been transposed into the Copyright Act under article 4(5). The term of protection is synonymous with that indicated in the Directive, namely that of twenty five years from the time when the work was first lawfully published or lawfully communicated to the public.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Our law does not provide any express reference to critical and scientific publications of works entering the public domain.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?
The Copyright Act mentions photographs when defining artistic works, and to this end, states that amongst others, artists works shall include "photographs not comprised in an audiovisual work"article 2). Furthermore, Maltese copyright law when discussing the eligibility to copyright states that "a literary, musical, or artistic work shall not be eligible for copyright unless the work has an original character and it has been written down, recorded, fixed, or otherwise reduced to material form" article 3(2)). Given this provision, and the lack of any provision which states otherwise, it would appear that protection arises solely for original photographs.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

Leaving aside the sui generis database right, according to article 3(4) of the Copyright Act, in order for a database to be eligible for copyright it must constitute "the author's own creation". The term for copyright of a database is that of seventy years after the end of the year in which the author dies, irrespective of the date when the work is lawfully made available to the public article 4(2)(i) Copyright Act). With respect to databases made under the control or direction of the Government of Malta/Government of other states or international bodies, the term of seventy years shall commence to run from the end of the year in which it was first published article 6 of the said Act).

Under the sui generis database right, there is no requirement for "originality". The term for databases under the sui generis right is fifteen years from the first of January of the year following the date of completion of the making of the database, or if made available to the public in whatever manner before expiry of the said period, from the year in which it was first made available to the public. If any substantial change, whether qualitative or quantitative is carried out to the contents of the database, including those resulting from successive additions, deletions or alterations, the resulting database would be considered to be a substantial new investment and therefore a new database, which shall be entitled from that moment to its own term of protection of fifteen years.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

The additional terms which apply under Maltese law are the following:

i. Sui generis database right which as discussed above is fifteen years from the first of January of the year following the date of completion of the making of the database or if made available to the public in whatever manner before the expiry of the said period article 27).

ii. Sui generis right for semiconductor product topographies, by virtue of article 32, subsists for ten years from the end of the year in which the semiconductor product topography was first commercially exploited anywhere in the world or for fifteen years from the first fixation or encoding of the semiconductor product topography if it has not been commercially exploited

iii. The terms for neighbouring rights are also applied in Malta: 50years for producers, performers and broadcasters:

- Producers: fifty years from the end of the year in which the sound recording or the first fixation of the audiovisual work was first lawfully published or lawfully communicated to the public, whichever is the earlier of in the absence of such publication or communications to the public from the end of the year in which the first fixation was made;
- Performers: fifty years from the end of the year in which the fixation of the performance was first lawfully published or first lawfully communicated to the public, whichever is the earlier or in the absence of the such publication or communication to the public from the end of the year in which it was first performed;
- Broadcasters: fifty years from the end of the year in which the broadcast was first transmitted whether by wire or over the air, be it by cable or satellite.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

The Maltese Copyright Act does not differentiate between nationals of EU member states and nationals of other Berne Convention countries. Being a member of the Berne Union, Malta applies the principle of reciprocity. To our knowledge, there were no provisions in Maltese copyright law which granted a longer term of protection to non-Community nationals. The term of protection is that which has been discussed throughout this questionnaire, which is the term harmonised by the Community.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?
Moral rights subsist until the expiry of the copyright, in accordance with **article 12 of the Copyright Act**.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.


17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightsholder (surviving spouse/ issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No, there is no similar distinction in Maltese Law.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

This is not the case under Maltese Law.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No, this is not the case for Malta.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No, Maltese law does not provide for a Domaine Public Payant for works which have fallen out of copyright and are now in the public domain.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

None at this moment.
20. The Netherlands

Author: Christina Angelopoulos,
Institute for Information Law (IViR), University of Amsterdam

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.


The term of protection of neighbouring rights is governed by the Wet op de naburige rechten (Wet van 18 maart 1993, Stb. 178, houdende regelen inzake de bescherming van uitvoerende kunstenaars, producenten van fonogrammen of van eerste vastleggingen van films en omroeporganisaties en wijziging van de Auteurswet 1912 (Wet op de naburige rechten), available at: http://wetten.overheid.nl/BWBR0005921/geldigheidsdatum_10-10-2009. For an unofficial English translation, see here: http://www.ivir.nl/legislation/nl/relatedrights_unofficial.pdf.)

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The main trigger point for the calculation of the term of protection of works of copyright according to Dutch law is the death of the author (Article 37, para.1 Dutch Copyright Act). Thus, the default term of protection for copyright in the Netherlands is 70 years after 1 January of the year following that of the death of the author.

Exceptions apply in the following cases:

1. Works of joint authorship: the duration of copyright belonging jointly to two or more persons in their capacity as co-authors of a work is 70 years from 1 January of the year following the year of the death of the last surviving co-author (Article 37, para.2).

2. Anonymous or pseudonymous works: the duration of protection for anonymous or pseudonymous works is 70 years after 1 January of the year following that in which the work was first lawfully communicated to the public, unless the author discloses his/her identity before the expiry of this term (Article 38, para.1).

3. Works for which a legal person is designated as author: the duration of protection for works of which a public institution, association, foundation or company is deemed the author and where the natural person who created the work is not indicated as the author on or in copies of the work which have been communicated to the public is 70 years from 1 January of the year following that in which the work was first lawfully communicated to the public (Article 38, para.2).

4. Cinematographic works: see below answer to Q. 6.

5. Posthumously published works: see below answer to Q.9.

6. Works published in volumes, parts, instalments, issues or episodes: where a work is published in volumes, parts, instalments, issues or episodes, and the term of protection runs from the time when the work was lawfully made available to the public, each volume, part, instalment, issue or episode is considered to be a separate work and the term of protection runs separately for each (i.e. the trigger point will be the date of publication of each) (Article 41).

7. Works in the land of origin of which copyright has expired: see below answer to Q.14.

It should also be noted that according to Article 7 of the Dutch Copyright Act, where labour carried out by an employee consists in the making of certain literary, scientific or artistic works, the employer is deemed to be the author, unless otherwise agreed between the parties. In such cases the trigger point for the calculation of the term of protection will accordingly be the death of the employer, if the employer is a natural person (if the employer is a legal person the trigger point will be the date of communication to the public, as stated under 3. above).

Under Dutch law there seems to be no concept equivalent to that of “collective works” in the meaning of Article 1, para. 4 Term Directive.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such
works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

There is no explicit definition of works of joint authorship in the Dutch Copyright Act, however Hoge Raad (Dutch High Court) case law distinguishes between works of joint authorship (gemeenschappelijke werken) and combinations of separate works (combinatiewerken). The main criterion for the distinction between these two categories is the separable or inseparable nature of the contributions. Inseparability of contributions presupposes a very close collaboration between the co-authors. An example of separable contributions would be the combination of music and lyrics that results in a song or the text and illustrations of a book. An example of a work of joint authorship on the other hand would be a painting on which more than one artist has worked.

As concerns works of joint authorship, the term of protection is 70 years from 1 January of the year following the year of the death of the last surviving co-author (Article 37, para.2). This term does not apply to combinations of works, compilations and adaptations. According to Article 5, para.1 of the Dutch Copyright Act, if a literary, scientific or artistic work consists of separate works by two or more persons (verzamelwerken – collections/compilations), the person under whose guidance and supervision the work as a whole has been made or, if there is no such person, the compiler of the various works, shall be deemed the author of the whole work, without prejudice to the copyright in each of the works separately. Similarly, according to Article 6 of the Dutch Copyright Law, if a work has been made according to the draft and under the guidance and supervision of another person, that person shall be deemed the author of the work. In such cases the term of protection will be 70 years from 1 January of the year following that of the death of that person (the author). Finally, according to Article 10, para. 2, adaptations (bewerkingen) of works are protected as separate works, whose term of protection is 70 years after the death of their author(s). Presumably the term of protection for combinations of works will run separately for each of the separable contributions.

Under Dutch law there seems to be no concept equivalent to that of “collective works” in the meaning of Article 1, para. 4 Term Directive.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works are considered to be a combination of several separate works in the Netherlands, each attracting its own individual term of protection.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

According to Article 8 of the Dutch Auteurswet “A public institution, association, foundation or company which communicates a work to the public as its own, without naming any natural person as the author thereof, shall be regarded as the author of that work, unless it is proved that the communication to the public in such manner was unlawful.” Legal persons can thus be original authors of works under Dutch law. The duration of protection for works of which a public institution, association, foundation or company is deemed the author and where the natural person who created the work is not indicated as the author on or in copies of the work which have been communicated to the public is calculated from 1 January of the year following that in which the work was first lawfully communicated to the public (Article 38, para.2).

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

According to Article 45a(2) of the Dutch Auteurswet, all natural persons who have made a contributions of a creative nature to the making of a cinematographic work shall be considered to be the authors of that work.

However, according to Article 40 of the Dutch Auteurswet, the term of protection of cinematographic works expires 70 years after the 1 January of the year following the year of death of the last of the following persons to survive: the principle director, the author of the screenplay, the author of the dialogue and the composer of the music created for use in the work.

If there is more than one person belonging to each of these categories then the year of death of the longest living person of all categories will be the correct trigger point.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

According to Article 11 of the Auteurswet, laws, decrees or ordinances issued by public authorities or in judicial or administrative decisions are excluded from copyright protection.
8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The duration of the right of performers, phonogram producers, broadcasting organisations and the producers of the first fixation of a film is set out in Article 12 of the Dutch Neighbouring Rights Act (Wet op de naburige rechten), according to which:

1. The rights of performers expire 50 years after 1 January of the year following that in which the performance took place. If, however, a recording of the performance was lawfully brought into circulation or communicated to the public within that period, the rights shall expire 50 years after 1 January of the year following that in which the recording was first lawfully brought into circulation or, if earlier, communicated to the public.

2. The rights of producers of phonograms expire 50 years after 1 January of the year following the year in which the phonogram was manufactured. If, however, the phonogram was lawfully brought into circulation within that period, the rights shall expire 50 years after 1 January of the year following that in which the phonogram was first lawfully brought into circulation. If the phonogram is not lawfully brought into circulation, but is communicated to the public within the period of 50 years mentioned in the previous sentence, the rights will expire 50 years after the date on which the phonogram was first communicated to the public.

3. The rights of broadcasting organisations expire 50 years after 1 January of the year following that in which a programme was first broadcast, regardless of the technical facilities used.

4. The rights of the producers of the first print of a film expire 50 years after 1 January of the year in which the first print took place. If, however, the first print was lawfully brought into circulation or communicated to the public within that period, the rights shall expire 50 years after 1 January of the year following that in which the recording was first lawfully brought into circulation or, if earlier, communicated to the public.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Under Article 45o of the Dutch Auteurswet, any person who, after the expiry of the term of copyright protection or, in the case of works which were never protected by copyright, at least 70 years after the death of the author, for the first time lawfully communicates to the public a previously unpublished work enjoys the exclusive rights of reproduction and communication to the public. The term of protection of these rights is 25 years after 1 January of the year following that in which the work was lawfully communicated to the public for the first time.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No such protection exists in the Netherlands.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

Dutch law does not provide for related rights protection for photographers regarding photographs without originality.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

Unoriginal databases are protected under the 1999 Dutch Database Act (Databankenwet). According to Article 6 of the Database Act, the term of protection for such databases is 15 years from 1 January of the year following the date of completion or of the last substantial change to the contents of the database (such changes should be evaluated qualitatively or quantitatively and may take the form in particular of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment). If however a database is made available to the public before end of this term, protection expires 15 years from 1 January of the year following the date when the database was first made available to the public.

Original databases are protected by copyright law and receive the same term of protection as other copyright works (70 years after the death of the author, unless an exception applies).

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as
to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No such provisions apply.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

According to Article 42 of the Dutch Auteurswet, the term of copyright, which has already expired in the country of origin of the work, may not be invoked in the Netherlands. This does not apply to works whose author is a national of a Member State of the European Union or a state party to the Agreement on the European Economic Area of 2 May 1992.

Article 33a of the Wet op de naburige rechten applies the rule of shorter term to the case of neighbouring rights as well, under certain conditions.

To my knowledge, no international agreements granting a longer term of protection to non-Community nationals apply.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

In principle moral rights in the Netherlands expire with the death of the author. By way of exception, moral rights do pass to the person designated by the author for this purpose in his or her last will and testament or in a codicil thereto. In this case moral rights expire along with the expiry of the economic rights of the author. In all other cases, moral rights may not be exercised even by the author’s next of kin or other heirs.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

Under the Dutch Auteurswet 1912 the term of protection for works of copyright was 50 years from the date of death of the author (Article 37). In 1972 the term of protection was slightly amended to 50 years from the 1 January of the year following that of the death of the author, so as to bring the wording of the Dutch act closer to that of the Berne Convention. That term was eventually extended to 70 years after the 1 January of the year following that of the death of the author with the implementation of the Term Directive into Dutch legislation in 1995.

Prior to the adoption of the 1912 Dutch Copyright Act the term of protection under the Auteurswet 1881 had been, under Article 12, 50 years after the first publication, to be calculated from the date on the receipt from the (mandatory at the time for the retention of copyright) deposit with the Department of Justice. However, if the author lived past this term of protection and had not in the meantime assigned his/her copyright to a third party, copyright protection was extended till the death of the author. The term of protection was changed so as to bring Dutch law into line with the rule of the Berne Convention.

According to Article 48 of the Dutch Copyright Act, copyright is not recognised in works in which, at the time of entry into force of the Act (1 November 1912), copyright had expired under Articles 13 or 14 of the Auteurswet 1881. Copyright acquired under the 1881 Act, however, or any other right of this nature acquired under earlier legislation which had not expired was, according to the Act, to continue to subsist even after its entry into force (Article 49).

In relation to the extension of 1995, the Dutch Copyright Act provides that the new rules on the term of protection apply, from the date of entry into force of the Act (1 July 1995), to works which were protected by national legislation on copyright on 1 July 1995 in at least one EU Member State or one state party to the Agreement on the European Economic Area.

It is also worth mentioning that according to Article 51 a term of protection which is already running on the day before the date of entry into force to the Act and which is longer than the term imposed by the new act cannot be reduced.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?
No such provisions apply in the Netherlands.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No, Dutch law does not provide for war-related extensions of the term of protection.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No such instances exist.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

Dutch law does not provide for a Domaine Public Payant.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No other noteworthy divergence applies in the Netherlands.
1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

Norwegian Copyright Act (May 12 1961).

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

These exceptions have been implemented in NCA §§ 40 and 41. The term for works of joint authorship is regulated in section (§) 40 first paragraph second sentence, which reads: "For such works as are referred to in section 6, the period of 70 years shall be calculated from the expiry of the year in which the last surviving author died, works of joint authorship being "such works as are referred to in section 6".

The term for pseudonymous and anonymous works is regulated in § 41 first paragraph first sentence, which reads: "If a work has been made available to the public with the consent of the right holder without stating the author's name, a generally known pseudonym, mark or symbol, the copyright shall subsist for 70 years after the expiry of the year in which the work was first made available to the public."

The further term for works of unknown authors is regulated in § 41 first paragraph third sentence: The term for collective works follows from the general provision in § 40 first sentence: "The copyright in works by an unknown author shall subsist for 70 years after the expiry of the year in which the work was created, if the work is not made available to the public during this period", cf. the Term Directive Article 1(6).

Works made in part is regulated in § 41 first paragraph second sentence: "If the work consists of several parts, the term of protection shall be calculated separately for each part."

Collective works follow the general rule in § 40 first sentence: "Copyright shall subsist during the lifetime of the author and for 70 years after the expiry of the year in which the author died".

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

Yes, there is a distinction between joint authorship, collective works and compilations in Norwegian law.

Joint authorship is defined in NCA § 6 as the situation where a "literary, scientific or artistic work has two or more authors whose individual contributions cannot be separated into independent works". It follows from this definition that the contributions must be inseparable, at least in the sense that if a contribution by any one author is separated, the remainder appears as incomplete.

Pursuant to NCA § 5 any person who by combining several literary, scientific or artistic works, or parts thereof, creates a collective literary, scientific or artistic work shall have the copyright in the collective work.

There is on the other hand no statutory definition of compilations, but it follows from general copyright principles that a compiler whose effort is sufficiently original will have copyright protection and his compilation be considered a work. The distinction between collective works and compilations is based on the fact that the former consist of works only while compilations also may consist of non-protected material.

The term of protection for works of joint authorship shall be calculated from the expiry of the year in which the last surviving author died (§ 40 second sentence, see question 2 above).

The term of protection for collective works and compilations shall be calculated from the expiry of the year of the author of the collective work, respectively compilation (§ 40 first sentence, see question 2 above). If the collective work/compilation also is a work of joint authorship the term for joint authorship must be considered as lex specialis and will hence apply.
4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works are considered to be works of joint authorship, but where the musical work also contains lyrics, the music and the lyrics will be considered as multiple separate works because they are separable (see question 3 above).

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

A legal person cannot be the original author of a work of copyright pursuant to Norwegian copyright law.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Yes, pursuant to § 40 third sentence the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic work are assigned to the term of protection for cinematographic works, in addition to the principle director. The term of protection for such works is 70 years after the death of the last of the contributors mentioned to survive.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Official documents are protected by copyright unless they are comprised by the exception in § 9 of the NCA. The term of protection is determined by the death of the author(s) pursuant to the general rules in Chapter 4 of the NCA, see question 1 above. The exception in § 9 reads:

“Legal statutes, administrative regulations, court decisions and other decisions by public authorities are not protected by this Act. This is also the case with proposals, reports and other statements which concern the public exercise of authority, and which are made by a public authority, a publicly appointed council or committee, or published by the public authorities. Similarly, official translations of such texts are not protected by this Act.

Literary, scientific or artistic works which have not been produced specially for use in documents specified in the first paragraph, and from which parts are quoted or which are reproduced in a separate appendix, are not covered by this provision. Nor shall the first paragraph apply to poetry, musical compositions or works of art.”

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, Article 3 of the Term Directive has been implemented in the NCA.

The term of protection for performers’ rights “shall subsist for 50 years after the expiry of the year in which the performance took place. If a fixation of the performance is made available to the public during this period, the term of protection shall subsist for 50 years after the expiry of the year in which the fixation was first made available to the public” (NCA § 42 second paragraph).

The term of protection for phonogram and film producers’ rights “shall subsist for 50 years after the expiry of the year in which the fixation took place. If the fixation is made available to the public during this period of time, the term of protection shall subsist for 50 years after the expiry of the year in which the fixation was made available to the public” (NCA § 45 second paragraph).

The term of protection for broadcasting organizations’ rights is determined in the following way: “If a transmission has been fixed on a device as referred to in the first paragraph, it shall not, without the consent of the broadcasting organization, be transferred to another device until 50 years have elapsed since the expiry of the year in which the first transmission took place” (NCA § 45a second paragraph).

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, Article 4 of the Term Directive has been implemented in the NCA (§ 41a). It is to be noted that such a provision did not exist prior to the implementation (in 1995).

The provision reads: “Any person who for the first time lawfully makes available to the public a literary, scientific or artistic work which has not been made available to the public with the consent of the right holder before the expiry
of the term of protection pursuant to sections 40 and 41 shall be entitled to the same right as an author pursuant to section 2. This right shall subsist for 25 years after the expiry of the year in which the work was first made available to the public.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Critical and scientific publications of works which have come into the public domain is not protected under Norwegian copyright law.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

None original photographs are protected pursuant to NCA § 43a (protection for photographic pictures). The relevant provision (§ 43a first and second paragraph), including the term of protection, reads:

“A person who produces a photographic picture shall have the exclusive right to make copies thereof by photography, printing, drawing or any other process, and to make it available to the public.

The exclusive right to a photographic picture shall subsist during the lifetime of the photographer and for 15 years after the expiry of the year in which he died, but for not less than 50 years from the expiry of the year in which the picture was produced. If the exclusive right is shared by two or more persons, the term of protection shall run from the expiry of the year in which the last surviving person died.”

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

The term of protection for original databases, which are to be considered as works, is determined by the general provision for works, cf. NCA § 40 first sentence (“Copyright shall subsist during the lifetime of the author and for 70 years after the expiry of the year in which the author died”).

The term of protection for databases sui generis (NCA § 43), comprising also non-original databases, is determined as follows: “The exclusive right to a database ... shall subsist for 15 years following the expiry of the year the work was produced. If the database during this time is made available to the public, the term of protection shall subsist for 15 years following the expiry of the year the work was first made available to the public” (§ 43 third paragraph).

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No other categories of works are given a different term of protection in Norway.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Article 7 is implemented in the regulation to the copyright act (NCR) in the chapter regulating protection vis a vis third countries (chapter 6).

The relevant provisions for works are § 6-3, regulating the term of protection vis a vis members of the Berne Union and the WTO (TRIPS) and § 6-6, regulating the term of protection vis a vis members of the Universal Copyright Convention. Both provisions read: “The protection … shall not endure beyond the term of protection granted for the relevant category of work in the country of origin of the work.”

As regards the related rights pursuant to Article 3 of the Term Directive, the term of protection outlined in question 8 above applies to the extent Norway is obliged to grant national of third countries protection pursuant to international obligations. The relevant provisions are §§ 6-9–6-12 of the NCR. The provisions are phrased in a general way, not mentioning the term of protection specifically, and I see no point in citing them.

Norway had prior to the adoption of the Term Directive no international obligations to grant a longer term of protection to non-Community nationals than foreseen in the Directive.
15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

“The moral rights laid down in NCA are principally not perpetual as the general term of protection rules also apply to such rights. On the other hand, there is a special provision (NCA § 48) preserving the moral interests from a cultural perspective. The provision reads:

“Even if the term of protection of copyright has expired, a literary, scientific or artistic work may not be made available to the public in a manner or in a context which is prejudicial to the author’s literary, scientific or artistic reputation or individuality, or to the reputation or individuality of the work itself, or which may otherwise be considered harmful to general cultural interests. Irrespective of whether the term of protection has expired or not, the Ministry concerned may, if the author is dead, prohibit a literary, scientific or artistic work from being made available to the public in such a way or in such a context as is referred to in the first paragraph. A similar prohibition may also be imposed by the Ministry at the request of a living author if the work in question is not protected in the realm. The provision in § 3, first paragraph, shall apply correspondingly, even if the term of protection of the copyright has expired or if the work is not protected in the realm.”

The Copyright Act § 3 first paragraph sets out the author’s right to be named as the author of the work.”

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The Norwegian copyright act was changed as to bring it in conformity with the Term Directive on July 1st 1995.

The transitional rules in the Copyright Act pertaining to the extensions made in 1995 are the following (cf. part III of the amendment act):

1) The amendments in the Copyright Act do not apply to acts that were performed or rights that were obtained before the amendments entered into force.
2) Any reproduction (except by way of reproduction of sound recordings) which was commenced or for which substantial preparations were made before the entry into force of the amendments, may to the extent this is necessary and customary, be finalised as planned, however at the latest before January 1st 2000. The copies made in accordance herewith may be distributed and displayed to the public, however the provisions in the Act regarding rental and, as concerns computer programs, lending, shall apply.
3) If a fixation made particularly for use in a broadcast includes a work which was not protected at the time when the fixation was made, that fixation might until January 1st 2000 be used for broadcasting even though the work then due to the extension of the term of protection was protected. This applied also to the performance or communication of films that contain works as here mentioned.
4) The rules in 3) applied also to fixations made in accordance with the provisions mentioned in 2).
5) The protection of posthumous works shall not apply to works that before section 41a (cf. point 7 above) entered into force have been made available to the public in the manner there required, unless the work was at this point in time already protected under a corresponding provision in another country that is a member of the EEA. (Cfr. the Term Directive Article 10(2).)
6) Anyone who before the amendments entered into force had lawfully obtained a copy of a photographic work or other photograph, has a right of rental of that copy, unless it has otherwise been agreed.

There were several cases of previously expired rights being resuscitated as a result of the prolongation of the term resulting from the Term Directive, the most prominent perhaps concerning the paintings of Edvard Munch, the copyright of which fell into the public domain on December 31st 1994 (Munch died in 1944) but then was revived as from July 1st the same year in order to last until December 31st 2014. The act did not specify whose rights were being revived.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/ issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No similar distinction prevails in Norwegian law.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?
Prior to the implementation of the Term Directive, during the period Dec. 2nd 1955 till June 30th 1995, Norwegian copyright law provided for war-related extensions of copyright (not related rights), but the present legislation does not provide for such extensions.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No.
1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

The law on Copyright and Related Rights. Act of February 4, 1994, Consolidated text: Journal of Laws from 2006, No. 90, item 631 with further amendments, further referred to as: CA. In this questionnaire I will rely on the translation of the Polish Copyright Act available at: http://en.wikisource.org/wiki/Polish_Copyright_Law_from_4_February_1994, however I must stress that there have been some later amendments and this version is not up to date.

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The exceptions provided in art. 1 of the Term Directive have been transferred almost verbatim into the Polish law. Art. 36 CA states that:

Subject to exceptions provided for in this Act, the author's economic rights shall expire after the lapse of seventy years:

1) from the death of the author, and in case of joint works -from the death of the coauthor who has survived the others,
2) if the author of a work is unknown -from the date of the first dissemination of the work, unless the pseudonym adopted by the author leaves no doubt as to his identity or the author has disclosed his identity,
3) if, under this Act, a person other than the author owns the author's economic rights -from the date of the dissemination of the work; and if the work has not been disseminated -from the date of the establishment thereof,
4) in the case of an audiovisual work -from the death of the latter of the persons mentioned below: the main director, the screenwriter, the author of dialogues, and the composer of music for that audiovisual work.

Article 37 of the CA provides that: “If the term of the expiration period of the author's economic rights starts to run from the date of the dissemination of the work and the work has been disseminated in parts, episodes, fragments or insertions, the term shall run separately from the date of dissemination of each of those parts.”

One has to stress that the Polish law does not distinguish collective works as a legal category of copyright works different from works of joint authorship with regards to the term of protection (although the category of collective works is known as such), however collective works may have a different term of protection since the law provides that copyright is vested with the producer/publisher (see below). With regard to other ‘composite’ works, in which creativity lies in the selection and arrangement of elements the term of protection should be calculated based on the assumption that the general term will apply to the person who created the work in this sense (i.e. was responsible for e.g. selection and arrangement). With regard to works with ‘separate’ elements each element must be treated as a copyright work in its own right.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

Polish copyright law knows inter alia the following categories of works:

a.) Collections, anthologies, selections, and databases (art. 3 CA), in which the creative element manifests itself in selection, arrangement or composition. There are no special provisions for the calculation of the term of protection.

b.) Works of joint authorship (art. 9 CA). The law itself does not define joint authorship (co-authorship), however it is commonly assumed that joint authorship requires a certain understanding between the co-authors as to the qualities of the work as a whole. The contributions of joint authors do not have to be inseparable. On the contrary art. 9 (2) CA states that “Each of the coauthors may exercise his copyright with respect to his autonomous part of the work without detriment to the other coauthors.” Under art. 36 CA in case of joint authorship the term is calculated from the death of the author who survived the others.

c.) Works combined in order to disseminate them jointly (art. 10 CA). There are no special provisions for the calculation of the term of protection.

d.) Collective works such as encyclopedias or periodical publications. Since according to art. 11 CA rights in such collective works are vested in producers or publishers. art. 36 p. 3 CA is applicable. The term of protection will be calculated from the date of dissemination of the work. However, some court decisions argue that in a collective work one must differentiate between the protection of the work as a whole and protection of its elements (e.g. articles in a publication). Thus, even if the term of protection of a collective
work has expired, it would still be illegal to use this work if the term of protection of its elements has not expired.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works will be treated as works of joint-authorship. Polish copyright law does not generally define certain categories of works (such as joint or collective) with regard to specific types of works (such as e.g. musical, literary, etc.).

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

A legal person may be the original owner of copyright with regard to computer programs (if the legal person is the employer) and with regard to collective works (art. 11 CA) if the publisher or producer is a legal person.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Generally, Polish copyright law does not limit the number of co-authors of audiovisual works. Any person who has contributed a creative input can be considered a co-author (69 CA). The law explicitly names as co-authors: the director, the director of photograph, the author of the adaptation of a literary work, the author of musical or textual and musical works created for the audiovisual work and the author of the screenplay. However, with regard to calculating the term of protection only certain co-authors are relevant. Art. 36 p. 4 CA states that in the case of an audiovisual work the term of protection is calculated from the death of the latter of the following persons: the main director, the screenwriter, the author of dialogues, and the composer of music for that audiovisual work.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Official documents are as a rule not protected by copyright in Poland. According to art. 4 p. 2 CA official documents, materials, logos and symbols are not the subject of copyright law, i.e. they are not treated as copyright works. One has to be however careful when defining what constitutes an official document.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Art. 3 of the Term Directive has been implemented in the following provisions of the Polish Copyright Act:

Art. 89, according to which performers’ rights expire after fifty years following the year in which the performance was established. However, if the fixing of the performance is published or communicated to the public during that time, the term of protection shall run starting from such an event or, when both of them take place, from the earlier one.

Art. 95 concerning phonograms and videograms. This provision also provides that producers’ rights expire after 50 years following the year in which the phonogram or videogram was made. If within this period the fonogram was published, the right in question will expire after 50 years following the year in which the phonogram was published. If the phonogram has not been published within the timeframe provided by art. 95 (1) but has been disseminated the right in question will expire after 50 years following the year in which the phonogram was disseminated. If the videogram has been published or disseminated within the period referred to in art. 95(1) (i.e. within 50 years after it was made), the right in question expires after 50 years following the year in which the earlier of these two (publication or dissemination) took place.

Art. 98 concerning broadcasts, according to which these rights expire after fifty years following the year of the first broadcasting of the program service.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Article 4 of the Term Directive has been implemented by art. 991 CA. This provision states that “the publisher who, after the expiry of the copyright protection term, for the first time legally publishes or otherwise disseminates the work, the copies of which have not been provided to the public, shall have an exclusive right to dispose and use the work in all the fields of exploitation for the period of 25 years after the date of the first publication or dissemination.”
10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The relevant provision is **art. 992 CA**. It states that: "The person who after expiry of the term of protection of the copyright to the work prepares a critical or scientific publication thereof, which is not a work, shall have the exclusive right to dispose of and use such publication within the scope specified in Article 50, subparagraphs 1 and 2, for 30 years after the date of publication."

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

There is no special legal regime for photographs in Poland. They are treated as ‘normal’ copyright works. Unoriginal photographs may not be protected by copyright law. On the other hand, one has to remember that the Polish copyright law, as applied in practice by courts, does not require a particularly high level of creativity.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

Creative databases are protected just like “normal” copyright works. It means that the term of protection will be calculated from the death of the author, i.e. the person who made the selection and arrangement of elements. The term of protection of the elements, if they are protected by copyright law, also follows the general rules.

Unoriginal databases are protected by the sui generis right under the law on databases of 21 July 2001. The term of protection is 15 years after the year in which the database was created. If within this time the database has been made available to the public, the term of protection expires after 15 years beginning on the day the database was made publicly available for the first time. If there is any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, the term of protection will be calculated separately.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

There are no such provisions. However see Q21

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

**Art. 7 of the Term Directive** has not been specifically implemented. The Polish Copyright Act contains a regulation generally concerning foreign authors and works (**art. 5 CA**). Apart from implementing the non-discrimination principle to EU nationals it refers to international conventions, the most important of which in this respect will be the Berne Convention. The terms of protection granted by Polish law before the implementation of the Term Directive were invariably shorter than the ones resulting from the directive.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

Yes, moral rights are perpetual. **Art. 16 CA** states that these rights are unlimited in time.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The law changing the provisions of the Polish CA in order to bring them in line with the Term Directive entered into force on 22 July 2000. It generally provided for the revival of protection of works, the term of protection of which had expired before. It should be noted that prior to this change the term of protection in Poland was 50 years post mortem auctoris.
17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

NO

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

NO

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

The term of protection provided by the Polish legislation prior to the implementation of the Term Directive was shorter than required by the directive.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

Yes, the main provision here is art. 40 CA. It provides that the producers or publishers of literary, musical, artistic, photographic and cartographic works that are not subject to protection of author’s economic rights, are obliged to pay a contribution amounting to 5%-8% of the gross proceeds from the sale of the copies of such works to the Fund for the Promotion of Creativity. This applies to the editions published in the territory of the Republic of Poland.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

An interesting question arises with regard to the regulation applicable in Poland to industrial designs, since designs can be protected also by copyright law, if they meet the criteria. Art. 116 of the Law on Industrial Property provides that the protection of author’s economic rights in a design does not apply to products manufactured according to the design and put into circulation after the design rights (as industrial property rights) have expired. The consequence of this is that the protection granted by copyright law, when cumulated with the protection by design law, may not extend further in time. Some authors claim this is clearly in breach not only of the Term Directive but also of the Berne Convention. Others argue this is not so, since copyright protection expires not as such, but only with regard to a limited scope (manufacturing and selling products according to the design).
1. How have the exceptions of Article 1 of the Term Directive (Directive 2006/116/EC) in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The European acquis on IPR have been implemented in the Copyright Law no 8/1996 by the following normative acts:

- Law no. 285/2004 on the modification and completion of Law no.8/1996 (the Official Gazette of Romania no.587/30.06.2004)

There is no explicit implementation of the Term Directive (Directive 2006/116/EC) in any national normative act. In fact the last modification of the Copyright Law was made before the Term Directive was published in the Official Journal of the EU. However, some of the provisions of the Term Directive are included in the national legislation.

The current text (from August 2010) of Romanian Copyright Law 8/1996 states the following:

**Art. 26.**—(1) The term of the economic rights in works legally disclosed to the public under a pseudonym or without a mention of the author’s name shall be 70 years from the date on which they were disclosed to the public. (2) Where the author’s identity is revealed to the public before the term mentioned in paragraph (1) expires, or the pseudonym used by the author leaves no doubt about his identity, the provisions of Article 25 (1) shall apply.

**Art. 27.**—(1) The term of the economic rights in works of joint authorship shall be 70 years from the death of the last surviving co-author. (2) Where the contributions of the co-authors are distinct, the term of the economic rights in each such contribution shall be 70 years from the death of the author thereof.

**Art. 28.**— The term of the economic rights in collective works shall be 70 years from the date of disclosure of the works. Where disclosure does not occur for 70 years following the creation of the works, the term of the economic rights shall expire 70 years after the said creation.

2. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? Are co-written musical works considered to be works of joint authorship or collective works? What about cinematographic or audiovisual works? Can you think of other examples of works of joint authorship, collective works or compilations in your national act? Could you please cite the relevant provisions of your national act?

The Law 8/1996 makes the following distinctions between different works of joint authorship and collective works:

**Art. 5.**—(1) A work of joint authorship shall be a work created by several co-authors in collaboration. (2) The copyright in a work of joint authorship shall belong to the co-authors thereof, one of whom may be the main author as provided in this Law. (3) Unless otherwise agreed, co-authors may only exploit the work by common consent. Refusal of consent by any one of the co-authors must be fully justified. (4) Where each co-author’s contribution is distinct, that contribution may be exploited separately, provided that it does not prejudice the exploitation of the joint work or the rights of the other co-authors. (5) In the case of the utilization of a work of joint authorship, the remuneration shall accrue to the co-authors in the proportions they shall have agreed upon. Failing such agreement, the remuneration shall be divided in proportion to the share contributed by each author, or equally if such shares cannot be determined.

For the works of joint authorship, the term is calculated according with art. 27 of the same law (cited above) – 70 years from the death of the last surviving co-author or if the contributions of the co-authors are distinct, the term is 70 years from the death of the author of each contribution.

**Art 6.**—(1) A collective work shall be a work in which the personal contributions of the co-authors form a whole, without it being possible, in view of the nature of the work, to ascribe a distinct right to any one of the co-authors in the whole work so created.
(2) Unless otherwise agreed, the copyright in a collective work shall belong to the person, whether natural person or legal entity, on whose initiative and responsibility and under whose name the work was created.

For the collective works, the term is calculated according with art. 28 of the same law – 70 years from the date of disclosure of the works.

There is no definition of compilations in the Law 8/1996, but they are considered as derivative works, as they are included in Art 8 para b.

Art. 8.— Without prejudice to the rights of the authors of the original work, copyright shall likewise subsist in derived works created on the basis of one or more pre-existing works, namely:

(b) collections of literary, artistic or scientific works, such as encyclopaedias, anthologies and collections and compilations of protected or unprotected material or data, including databases, which, by reason of the selection or arrangement of their subject matter constitute intellectual creations.

Also, if a compilation is a database, a sui-generis right on the database might exist according with Title II Chapter IV “Sui generis rights of the makers of databases” of the Romanian Copyright Law.

The audiovisual or cinematographic works are indirectly considered by law a work of joint authorship, by the reference made in Article 66 (which defines who are the authors in such a type of work) to Article 5 that defines the joint authorship work.

Art. 66.— The authors of an audiovisual work, as provided in Article 5 of this Law, are the director or maker, the author of the adaptation, the author of the screenplay, the author of the dialogue, the author of the musical score specially composed for the audiovisual work and the author of the graphic material of animated works or animated sequences, where these represent a substantial part of the work. In the contract between the producer and the director or maker of the audiovisual work, the parties may agree to include other creators who have contributed substantially to the creation of the work as authors thereof.

We need to point out that under the previous copyright law (Decree 321/1956), the cinematographic work, as well as radiofonic works were expressly (article 11) considered as collective works. (but there was no definition of collective work).

As regards co-written musical works, there isn't any clear provisions in the law, but it could fall mostly under the provisions of works of joint authorship. Some authors consider that the essential criteria is the “community of inspiration” and that does not exclude even a “repartition of tasks” or “contributions of different works (such as text and music in a song)”, while others consider that a joint authorship work imply a unitary work. (therefore a painter that makes the illustration to a novel is not a co-author with the latter's author.)

As regards examples of collective works, Romanian doctrine notes that those may be: encyclopaedias, dictionaries, newspapers or some types of computer programmes (operating systems).

3. Are cinematographic or audiovisual works defined in your national legislation? Are other co-authors assigned to such a work, other than the principle director in accordance with Article 2 of the Term Directive? In whom is copyright of such a work vested in your national legislation (please see Article 14bis (2) Berne Convention)?

The Audiovisual or cinematographic work is defined in article 64 of the Law 8/1996:

Art. 64.— An audiovisual work is a cinematographic work, a work expressed by a procedure similar to cinematography, or any other work which makes use of moving images, accompanied or not by sounds.

The roles of the director and producer are defined in art 65 of the same law:

Art. 65.—(1) The director or maker of an audiovisual work is the natural person which within the contract with the producer oversees the creation and production of the audiovisual work in the capacity of main author.
(2) The producer of an audiovisual work is the person, whether natural person or legal entity, who takes responsibility for the production of the work and in that capacity organizes the making of the work and provides the necessary technical and financial resources.
(3) The written form of a contract between the producer and the main author is compulsory for the performance of an audiovisual work.

63 Y Eminescu, “Regarding the definitions of <<collective work>> and << joint authorship works>>” – New Justice, no 7/1964, page 69
64 V Ros, op cit, page 56
The other co-authors assigned to such a work are foreseen in art 66 (cited above).

As regards provision of the Article 14bis (2) Berne Convention, this has been implemented in the national legislation by Article 70.

Art. 70.—(1) By the contracts concluded between the authors of the audiovisual work and the producer, unless otherwise provided, it shall be presumed that they assign to the producer, with the exception of the authors of the specially composed music, the exclusive rights with respect to the use of the work as a whole, provided for in Art. 13, as well as the right to authorize dubbing and subtitling, against an equitable remuneration.

(2) Unless otherwise provided, the authors of the audiovisual work as well as other authors of certain contributions to it shall retain all rights in the separate utilization of their own contributions, as well as the right to authorize and/or to prohibit utilizations other than that specific of the work, in whole or in part, like the use of excerpts from the cinematographic work for advertising, other than for the promotion of the work, subject to conditions of the present law.

4. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation and, if so, what is the term of protection? Did situations corresponding to that described in Article 3(2) of the consolidated version of the Term Directive, involving phonograms that were not afforded protection under the Directive 93/98/EEC, but would have qualified under Directive 2001/29/EEC, arise in your jurisdiction? Was Article 3(2) of the consolidated version of the Term Directive implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The term of protection is 50 years. Article 3 of the Term Directive is implemented in the Law 8/1996 by the following articles:

Art. 102.—(1) Duration of the patrimonial rights of performers shall be of 50 years as from the date of performance. However, if the fixation of the performance throughout such duration makes the object of a lawful publishing or lawful communication to the public, the duration of the rights shall be of 50 years as from the date when whichever of them has taken place for the first time.

(2) Duration provided for under paragraph (1) shall be calculated as from the 1st of January of the year following the fact generating rights.

Art. 106.—(1) Duration of the patrimonial rights of producers of sound recordings shall be of 50 years as from the date of the first fixation. However, if the recording throughout such duration makes the object of a lawful publishing or lawful communication to the public, the duration of the rights shall be of 50 years as from the date when whichever of them has taken place for the first time.

(2) Duration provided for under paragraph (1) shall be calculated as from the 1st of January of the year following the fact generating rights.

Art. 1064.—(1) The duration of the economic rights of the producers of audiovisual recordings shall be 50 years as of the first of January of the calendar year following that in which the first fixation took place.

(2) Where the audiovisual recording is disclosed to the public during this period, the duration of the economic rights shall expire after 50 years as of the date on which it was disclosed to the public.

Situations corresponding to that described in Article 3(2) of the consolidated version of the Term Directive did not arise in Romania.

Article 3(2) of the consolidated version of the Term Directive was not implemented yes in the national legislation.

5. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation and, if so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Article 4 of the Term Directive has been implemented in the national legislation by Article 25 para 2 of Law 8/1996. The term of protection is 25 years.

(2) The person who, after the copyright protection has expired, legally discloses for the first time a previously unpublished work to the public shall enjoy protection equivalent to that of the author’s economic rights. The duration of the protection of those rights shall be 25 years, starting at the time of the first legal disclosure to the public.

6. Has Article 5 of the Term Directive on critical and scientific publications been implemented in your national legislation and, if so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No, article 5 of the Term Directive has not been implemented in the national legislation.
7. Has Article 6 of the Term Directive on the protection of photographs been implemented in your national legislation and, if so, what is the term of protection? Could you please cite the relevant provisions of your national act? Are non-original photographs protected under your national legislation in addition to original ones?

The protection of photographs is included in the general definition of article 7 of the law 8/1996. The term of protection is the same as with any other work in article 7.

“Art. 7.— The subject matter of copyright shall be original works of intellectual creation in the literary, artistic, or scientific field, regardless of their manner of creation, specific form or mode of expression and independently of their merit and purpose, such as:

(...)

(f) photographic works and any other works expressed by a process analogous to photography;
(...)

If a photo is not original, than one of the basic criteria of a work to be protected under this law is not met. Therefore a non-original does not fit into the description of Article 7 and is not subject to copyright protection. An additional limitation to copyrighted works is set by Article 85 para 2 of Law 8/1996:

“(2) Photographs of letters, deeds, documents of any kind, technical drawings and other similar material do not qualify for legal protection by copyright.”

Under the former copyright law – Decree 321/1956 the protection of photographs was limited to “artistic photographs” (Article 9), therefore not all photographs were protected.

8. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2) – What specific acts do you have in mind ??

The only reference to protection vis-a-vis third countries is foreseen in art. 147 of the Law 8/1996

Art. 147.— Foreign citizens or juridical persons, owners of copyright or neighbouring rights shall enjoy the protection provided by international conventions, treaties and agreements to which Romania is party, failing which they shall enjoy treatment equal to that accorded to Romanian citizens, on condition that the latter, in turn, are granted similar (national) treatment in the concerned countries.

According to information we've got, we don't think that Romania accepted any international obligations granting a longer term of protection than those foreseen by Article 7(1) and (2) of the Term Directive. In fact Romania ratified the 1961 Roma Convention on performers protection and the 1971 Geneva Convention on Phonograms protection only in 1998. See also answer to Q14.

9. Are moral rights in your country perpetual? (Please see Article 9 Term Directive.) Could you please cite the relevant provision of your national act?

Yes, the moral rights are perpetual according to Law 8/1996 – Article 11

Art. 11.—(1) The moral rights may not be renounced or disposed of.
(2) After the author’s death, the exercise of the rights provided for in Article 10 (a), (b) and (d) shall be transferred by inheritance, in keeping with civil legislation, for an unlimited period of time. If there are no heirs, the exercise of the said rights shall revert to the collective management organization that has managed the author’s rights or, as the case may be, to the organization having the largest membership, in the field of creation concerned.

10. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights over works in which copyright or related rights subsist being resuscitated? If so, for how long? Did your national act specify whose rights were being revived (e.g. those of the heirs of the author, the last rightholder to acquire the copyright prior to its termination through assignment or other transfer of rights, another party)? Did your national act take advantage of the latitude as to cinematographic or audiovisual works provided by Article 10 (4) Term Directive? Please cite the relevant provisions of your national act.

As explained to the answer first point there wasn’t a specific date when the national copyright act was updated with the Term Directive. There were not any cases of copyrights being resuscitated or revived. Or any reference to the works provided by Article 10(4) of the Term Directive.

As regards transitional provisions between different laws, they are explained in the answer to question 14.

11. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via
escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No, there is no distinction in these cases in the current law. **Article 25 para 1 of Law 8/1996** shall apply for transmitting the patrimonial rights after the death of the author.

**Art. 25.**—(1) The economic rights provided for in Articles 13 and 21 shall last for the author’s lifetime, and after his death shall be transferred by inheritance, according to civil legislation, for a period of 70 years, regardless of the date on which the work was legally disclosed to the public. If there are no heirs, the exercise of these rights shall devolve upon the collective management organization mandated by the author during his lifetime or, failing a mandate, to the collective management organization with the largest membership in the area of creation concerned.

However, under the former law – **Decree 321/1956** - article 6 the term of protection varied depending on its inheritors (established according with the common law – Civil Code):

- for surviving spouse or its ascendants – for their entire lifetime
- descendants – for 50 years
- other inheritors – for maximum 15 years. If these other inheritors were minors, they could enjoy these patrimonial rights even after 15 years, until they reach 18 years old or finish their higher education, but not after they were 25 years old.

Also, if the copyright was owned by a legal person, the patrimonial author right was limited to 50 years from the work publication. **(article 7 Para 3)**

12. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No such exceptions available. However, according to some authors a prolongation of copyright duration may appear in case of war.

13. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No

14. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

There are several problems regarding the application in time of the copyright laws adopted in Romania from 1862 onwards. The legislation applicable if the following

- Law on literary and artistic property – no 126 from 28 June 1923 - Official Monitor from 28 June 1923
- Decree 321/1956 – cited above

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66 Original text in Romanian:

Art. 6. - La moartea autorului sau a vreunui dintre coautori, drepturile patriei moniale de autor se transmit prin mostenire, potrivit Codului Civil, insa numai pe urmatoarele termene:

a) soțului si ascendentilor autorului, pe tot timpul vieții fiecarui;

b) descendenților, pe timp de 50 ani;

c) celorlalți mostenitori, pe timp de 15 ani, fără ca în acest caz dreptul sa se poata transmite din nou prin mostenire.

Termenele prevazute la lit. b și c se socotesc de la 1 ianuarie al anului următor mortalității autorului.

Daca mostenitorii prezavuz liti. c sint minori ei se vor bucura de aceste drepturi patrimoniale si dupa trecerea termenului prezavuz mai sus, pina la dobândirea deplinei capacități de exercitui sau pina la terminarea studiilor superioare, dar numai pina la implinirea virstei de 25 ani.

The following table might help understand the current issues:

<table>
<thead>
<tr>
<th>Law from</th>
<th>1862</th>
<th>1923</th>
<th>1956</th>
<th>1996</th>
<th>2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Covered works</td>
<td>Writings, Music Composers, Painters or Drawers</td>
<td>All intellectual works</td>
<td>All intellectual works</td>
<td>All intellectual works</td>
<td>All intellectual works</td>
</tr>
<tr>
<td>Duration of Protection</td>
<td>Life + 10 years</td>
<td>Life + 30 years</td>
<td>Life + a period (see answer to Q 11 above)</td>
<td>Life + 70 years</td>
<td>Same as in 1996</td>
</tr>
<tr>
<td>Exceptions for duration of protection</td>
<td>-</td>
<td>For common works – 30 years from the death of the last collaborator (art 40)</td>
<td>– encyclopaedias, dictionaries and collections – 20 years from publication</td>
<td>– series of artistic photos – 10 years from publication</td>
<td>See above answers to questions</td>
</tr>
<tr>
<td>Limits for inheritors</td>
<td>-</td>
<td>Some limits for some inheritors (but not the duration) – see article 4</td>
<td>See above answer to Q11</td>
<td>None</td>
<td>Same as in 1996</td>
</tr>
<tr>
<td>If there are no inheritors</td>
<td>Public domain</td>
<td>Public domain</td>
<td>Public domain</td>
<td>Collective Society</td>
<td>Same as in 1996</td>
</tr>
<tr>
<td>Conflict of laws in time</td>
<td>-</td>
<td>No retroactive effect. Inheritors rights prolonged to 30 years if the work is not in public domain</td>
<td>No retroactive rights. Inheritors rights prolonged if the work is not in the public domain</td>
<td>Art 149 Para 3 The duration of the exploitation rights in works created by authors deceased before the entry into force of this Law and for which the term of protection has expired shall be extended up to the limit of the term provided for in this Law. Such extension shall come into effect only on the entry into force of this Law.</td>
<td>Art 149 Para 3 The duration of the economic rights in works created by authors deceased before the entry into force of this Law and for which the term of protection, calculated according to the procedures of the prior legislation, has not expired shall be extended up to the limit of the term provided for in this Law. Such extension shall come into effect only since the entry into force of the present law.</td>
</tr>
</tbody>
</table>
A. As we may infer from above there are a series of works that have a very short protection in the law from 1923 (State owned works) or 1956 (collective works or photographies).

B. However, the text regarding the application in time from the law in 1996 (Article 149 Para 3) can be literally understood as a prolongation of copyright for the works that were previously in the public domain. However, the unanimous opinion of specialists, confirmed by the change of the law in 2004 (see our text underlined and bolded) is that the solution from 1996 is wrong and the text misses the (essential) NOT – as a result of an omission.

From here the opinions diverge: (Personal comment: I actually didn't have enough time to go in depth with this analysis)

a. According to some authors (Art 149 Para 3 from Law 8/1996 might have legal effects and therefore the inheriters of the copyrighted works that were into the public domain before the law from 1996 came into force (26 June 1996) may ask for its protection from the moment when the new law went into force.

b. According to other opinions and to one case from Appeal Court jurisprudence the Article 149 Para 3 from law 8/1996 should be interpreted based on the “real will” of the legislator and therefore the text should be read as modified in 2004: which the term of protection has NOT expired. The latter argument, which we share, resides on the fact that a different interpretation would lead to a retro-activity of this law for legal situations already exhausted, which would be inadmissible according with Article 15 Para 2 of the Romanian Constitution. Also using the word “extended” is essential in expressing the real will of the legislator in this case.

Therefore also the law from 1996 does not retroactivate the copyrights exhausted by March 1996.

C. An additional issue might appear with the International Conventions in the field of copyright signed or ratified by Romania that may have legal precedence before the national legislation.

Romania has ratified (with some reserves) the Bern Convention by Law 152 from 1926 in its form signed at BERNE on September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908 and completed at BERNE on March 20, 1914. However the Article 7 in the text adopted by Romania did not impose a period of protection if the national legislation was different.

Romania has also ratified that following acts of revision of the Bern Convention, such as the Stockholm Act, in its totality by the Decree 1175/1968 (published in the Official Bulletin no 1 from 6.01.1969). The Decree also included the declaration, conform article 7 of the Bern convention, to maintain the national legislation for the duration of copyright protection. However, according to the Romanian authors, the Stockholm Act was never in force, not reaching the number of signatories for the articles up to Article 22.

The final version of the Bern Convention (as modified in 1979) was adopted only in 1998 by Law 77/1998.


Therefore it seems that the International convention where Romania was a part of did not have too much effect on the national duration of copyright protection.

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69 V Ros, op cit, page 297
71 Bucharest Court of Appeal, Section IX Civil and Intellectual Property, Decision 248 A from 30 November 2006. The decision in this case has been confirmed by the Supreme Court – the High Court of Cassation and Justice – Decision 7606 from 26 October 2007.
72 Please not that the Romanian legal system is not jurisprudential and therefore the current case can’t be used in a precedent.
73 See decision Bucharest Court of Appeal mentioned above
74 And not other words used to “revive” rights that were annuled – see for example on Law on terrain property 18/1991 where the word “re-constitutes” is used to for the property of the fields taken by the communist regime and given back to its lawful owners
75 Published in the Official Monitor no 211 from 22 September 1926
76 Article 7.
77 Y. Eminescu, Authors’ Right – Law 8 from 14 March 1996 commented, Ed. Lumina Lex, 1997, Page 45
78 Published in the Official Monitor no 156 from 17.04.1998
24. Portugal

Author: Alexandre L.D. Pereira

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

The legal act which governs the term of protection of copyright and related rights is the Code of Author’s Right and Related Rights (Código do Direito de Autor e dos Direitos Conexos) - brevis causa, Copyright Act - Chapter IV (Articles 31 to 39 and Article 183) as amended by Decree-Law 334/97 of 27 November in order to implement Council Directive 93/98/CEE of 29 October (now repealed by EU Directive 2006/116/EC of 12 December 2006). The term of protection for databases is governed by the Database Act enacted by Decree-Law 122/2000 of 4 July which has implemented EU Directive 96/9/EC of 11 March. Hereinafter the Articles referred to belong to the Copyright Act, unless otherwise stated. The general term of protection is 70 years after the death of the intellectual creator even where the work has only been published postmortem auctoris (Art. 31). The term of protection occurs after January 1 of the year following the year in which the term has been completed (Art. 3 of DL 334/97).

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

In relation to works of joint authorship the term is 70 years after the death of the author who dies in the last place (Art. 32(1)). In relation to collective works, the term is 70 years after the first lawful publication or divulgation, unless the human persons who have created the work have been identified in the versions of the work made available to the public (Art. 32(2)). The term of copyright concerning individual and separable contributions to the collective work is the general term, i.e., 70 years after the death of the intellectual creator, even if the work has only been published postmortem (Art. 32(3) and Art. 31). In relation to anonymous and pseudonymous works, the term is 70 years after the publication or divulgation (Art. 33(1)), unless the pseudonymous used leaves no room for doubts concerning the identity of the author or in case he/she reveals it within such term, as the term will correspond to the term of works published or divulgated under his/her own name (Art. 33(2)). Concerning works published in parts, instalments, issues or episodes, for each of them the term is separately calculated (Art. 35(1)). This applies also to parts or issues of periodical collective works such as newspapers and publications alike (Art. 35(2)).

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

Portuguese copyright law distinguishes works of joint authorship (obras em colaboração) from collective works (obras colectivas). Compilations can be works equivalent to original works (obra compósita).

Works of joint authorship are defined as those which are a creation of a plurality of persons and are divulgated or published under the name of them or some of them, whether or not the individual contributions can be discriminated (Art. 16(1)(a)). So, joint authorship does not presuppose that the contributions of several authors are inseparable and each author may individually exercise the rights corresponding to his/her personal contribution, when it can be discriminated and without prejudice to the joint exploitation of the work of joint authorship (Art. 18(2)). The same applies, mutatis mutandis, to collective works (Art. 19(2)).

Collective works are defined as those which are a creation of a plurality of persons when it is organized by the initiative of a human or legal person and published under his/her/its own name (Art. 16(1)(b)). Compilations as composite works are those which incorporate, in whole or in part, a preexisting work with the authorization but without the collaboration of its author (Art. 20).

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works, as such, are considered to be, in principle, works of joint authorship. Several works are legally deemed to be works of joint authorship such as broadcasted works (Art. 21), cinematographic works (Art. 22) as well as phonographic and video works (Art. 24). Journals and other periodical publications are legally deemed to be collective works (Art. 19(3)), as well as computer programs and databases created within an enterprise (Decree-Law 252/94 of 20 October, Art. 3(2), and Decree-Law 122/2000 of 4 July, Art. 5(2)). Compilations include namely dictionaries, encyclopedias and anthologies (Art. 3(1)(b)(c)) which are also considered collective works.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?
Portuguese copyright law belongs to the family of droit d'auteur. **Article 29(1) of the Copyright Act** apparently implies that a legal person can be the original author of a work. Moreover, some provisions seem to imply an original assignment of the copyright to legal persons, such as **Art. 32(2), Art. 36 (computer programs), and Art. 6(2) of DL 122/2000 (databases)**. Those would be mainly the cases of works made for hire and collective works organized by and published under the name of a legal person. In short, author would be the original owner of copyright according to legal provisions. However, dogmatically, this derogation to the principle of authorship is rather controversial as legal persons are deprived of the capacity of intellectual creation, which is recognized only to human persons. Moreover, despite the dualistic system of Portuguese copyright law (meaning that economic rights can be independently disposed of by act inter vivos), it is also controversial whether the original owner of the copyright can be someone else but the creator as, according to well established jurisprudence, the originating fact of copyright is the act of creation itself.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Together with the director there are other co-authors assigned to cinematographic or audiovisual works namely the author of the script, the author of the dialogues, and the author of the musical composition (**Art. 22**). Similar co-authors are assigned for specific audiovisual works such as broadcasted and video works (**Arts. 21(2) and 24**). The term of protection is 70 years after the death of the last surviving person assigned as co-author (**Art. 34**). There is legal opinion holding that the typical creative input in cinematographic works is provided for by the director and the other persons are legally assigned as co-authors for reasons of convenience.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Official documents (e.g. legal texts, court decisions) are not protected by copyright in Portugal (**Art. 8(2) and Art. 3(1)(c)**).

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

**Article 3 of the Term Directive** on the duration of related rights has been implemented into **Article 183 of the Copyright Act by Decree-Law 334/97 of 27 November**. According to **Article 183(1)**, the term of protection of related rights is 50 years after: the performance by the interpreting or performing artist (a), the first fixation of phonogram, video or movie by the producer (b), the first emission by the broadcasting organization whether by means of wire or wireless, including cable or satellite (c). However, in case the fixation of the protected performance, phonogram, video or movie are legally published or publicly communicated within such period, the term of protection starts with these facts (**Art. 183(2)**). By movie it is understood a cinematographic or audiovisual work as well as any sequence of motion pictures (moving images) together or not with sound (**Art. 183(3)**). Owners of related rights whose country of origin is a non EU country are afforded the term of protection of their country of origin provided it does not exceed the above mentioned term of protection (**Art. 183(4) and Art. 37**).

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes, the term of protection, limited to economic rights, is 25 years after the publication or divulgation of previously unpublished works which have come into the public domain (**Art. 39(1)**).

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Critical and scientific publications of works which have come into the public domain are protected under Portuguese copyright law for a term of 25 years after lawful publication (**Art. 39(2)**).

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

Non-original photographs are not protected under Portuguese copyright law (**Art. 164**), and no specific term of protection is provided for original ones.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.
The term of protection for original databases is 70 years after the death of its intellectual creator (Art. 6(1) of DL 122/2000). In case protection is originally attributed to other entities (e.g. in case of databases created within an enterprise or made for hire) the term is for 70 years after its first publication or public divulgation (Art. 6(2) of DL 122/2000). The term of protection of the database producers' sui generis right is for 15 years after the conclusion of its production starting on the January 1st of the year following the year of its date of production (Art. 16(1) of DL 122/2000). Non-original databases can have only this term of protection. Each substantial modification to the content of a database which qualifies as a substantial investment gives rise to a term of protection of its own.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

Broadcasting, reproducing in phonogram or video, filming or exhibiting of public performances of protected works is subject to authorization also of the promoter of the public show (Art. 117). However, no rule as to the term of protection is provided for this 'atypical' related right.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Works whose country of origin is a foreign non EU country and whose author is not a national of an EU country are afforded the term of protection of the legislation of the country of origin provided it does not exceed the term of protection established by the Copyright Act (Art. 37). Owners of related rights whose country of origin is a non EU country and who are not nationals of an EU country are afforded the term of protection of their country of origin provided it does not exceed the term of protection established by the Copyright Act (Art. 183(4) and Art. 37). No record has been found concerning the acceptance by Portugal, prior to the adoption of the Term Directive, of any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2) of the Term Directive.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

In Portugal moral rights may be considered relatively perpetual as they are enjoyed by the author, regardless and even after the transmission or extinction of the economic rights (Art. 9(3)). Moreover, the ‘moral rights’ is inalienable, has no term of protection and is perpetuated after the death of the author (Art. 56(1)), meaning that while it does not come into the public domain it is exercised by the heirs of the author (Art. 57(1)) and once into the public domain the protection of the integrity of the work is done by the State (Art. 57(2)). According to relevant copyright literature, this means that, once into the public domain, only the right of integrity seems to be perpetual but no longer as an author’s right but rather as a right of the State concerning the protection of the country’s cultural heritage.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

In order to implement the Term Directive (93/83/CEE) the Copyright Act has been amended by Decree-Law 334/97 of 27 November. The provisions of this Act became applicable since 1 July 1995 and to any work, performance or production protected on that date in any country of the European Union (Art. 5(1)). No transitional provisions have been introduced. There were cases of resuscitation because the heirs of the author enjoyed the reactivation of rights arising thereof (i.e., provided that protection existed on that date), but without prejudice to the acts of exploitation already practiced and rights acquired by third parties (Art. 5(2)).

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No, the term of protection does not vary according to the class of the beneficiary to whom the copyright or related rights pass after the death of the copyright holder, except in what concerns the perpetual 'right of integrity' which is conferred to the State (Art. 57(2)).

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété
intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No record found.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No record found.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

Copyright law does not provide a Domaine Public Payant. There is however discussion whether legislation on access to and reuse of administrative documents as well as on the protection of cultural heritage could provide the foundations of such a regimen.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No record found.
25. Slovakia

Authors: Zuzana Adamová (Intellectual Property Law Institute at Trnava University); Martin Husovec (European Information Society Institute);

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

Act No. 618/2003 Col. of 4th December 2003 on Copyright and Rights Related to Copyright (the Copyright Act) as amended;

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

According to § 21 (1) CA the economic rights in general shall last for the life of the author and for 70 years after his death.

In the case of the work of co-authors (work of joint authorship) and in the case of compilations created for the purpose of being used in such an interconnection, the economic rights shall last for the life of the last surviving author and 70 years after his death. (§ 21 (2) CA);

In the case of the collective work, the economic rights shall last for 70 years after releasing the work. If the work was labelled with the names of the authors who created the work, the economic rights shall last for the life of the last surviving author and 70 years after his death. (§ 21 (3) CA);

The economic rights to an audiovisual work shall last for the life of the head director, scriptwriter, author of dialogues and the composer of music that was specifically created for this work, and 70 years after the death of the last surviving person of the above; in this case provisions of § 21 (2) and (3) CA do not apply. (§ 21 (4) CA);

The economic rights to a released pseudonymous and anonymous work shall last for 70 years from the time when the work was released. If there are no doubts about the author’s identity or if the author of such a work becomes publicly known during the course of the term pursuant to the first sentence, the term of economic rights to such work shall be governed by § 21 (1) CA, and in the case of a work of joint authorship by § 21 (2) CA;

If the release of a work is decisive for the duration of economic rights to a work published in volumes, parts, instalments or episodes, the economic rights shall run for each such volume, part, instalment or episode separately. (§ 21 (6) CA);

If a work where the death of the author or authors is not decisive for the calculation of the duration of economic rights was not released within 70 years from its creation, the economic rights shall expire at the end of this period. (§ 21 (7) CA);

The term of economic rights shall be calculated from the first day of the year following the year in which the event forming basis for its calculation occurred. (§ 22 CA);

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? Could you please cite the relevant provisions of your national act?

Works of joint authorship, collective works and compilations have the same regime of copyright term protection – author’s lifetime plus 70 years after the death of the last surviving author. The only difference is legislated in case of collective works that are not labelled with the name of the authors who created the work. These works are protected 70 years after releasing of the work. (§ 21 (2) and (3) CA);

A work is released on the day of its first public performance, public presentation, publishing or making available to the public by the other manner. A work is published on the day when authorised public distribution of its reproductions commenced. (§ 13 CA);

If so, what is the definition for each of these categories and how is the term of protection for such works calculated?

Work of joint authorship is a work, which is the unique outcome of the creative activity of two or more authors as one exclusive work to which rights are pertaining to all of the authors jointly and severally. (§ 8 CA);

Compilation is a work, which is a result of the connection of two or more independent works. (§ 9 CA);
Collective work is a work which was created with the participation of the collective activity of two or more authors who gave their consent to use their own unique outcome of the creative activity when creating the work under the conduct of a natural person or legal entity, who
a) initiated the creation of this work, and
b) directed and provided for the process of the work creation.  
(§ 10 CA)

In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable?

Yes, contributions have to be inseparable.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction?

There are no special provisions neither on co-written musical works, nor musical works as such in the Copyright Act. In the case of the musical works created by several co-authors, the general provisions on the works of joint authorship (§ 8 CA) will apply; in the case of the musical works with the lyrics, the general provision on compilations (§ 9 CA) will apply;

Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

No.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

No.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive?

Yes. The co-authors of the audiovisual works are especially considered the head director, scriptwriter, author of dialogues and author of music which was specifically created for this work. Legislator used term “especially” to indicate that this is not the exhausting list of co-authors of the audiovisual work. (§ 5 (2) CA)

According to § 7 (1)(e) CA, cinematographic works are explicitly included in the broader category of audiovisual works.

What is the term of protection for such works in your national jurisdiction?

The economic rights to an audiovisual work shall last for the life of the head director, scriptwriter, author of dialogues and the composer of music that was specifically created for this work, and 70 years after the death of the last surviving person of the above. (§ 21 (4) CA)

7. Are official documents protected by copyright in your country? Could you please cite the relevant provisions of your national act?

No. According to § 7 (3)(b) CA any text of legal regulation, official decision, public charter, publicly accessible register, official records, Slovak technical norm including a draft documentation thereof and translation of such works is excluded from the copyright protection.

If so, what is the term of protection?

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8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? Could you please cite the relevant provisions of your national act? If so, what is the term of protection?

Yes.

The rights of the performing artist shall last for 50 years from the creation of the artistic performance. If the recording of such artistic performance is released during this period, the rights of the performing artist shall not expire until 50 years from the time when such work was released. (§ 63 (7) CA)
The rights of a phonogram producer shall last for 50 years from the year in which the sounds embodied in the phonogram were first fixed. If the phonogram is released during this period, the rights of phonogram producer shall expire after 50 years from the time when such publication occurred.

The rights of an audiovisual recording producer shall last for 50 years from the making an audiovisual recording. If the audiovisual recording is released during this period, the rights of the audiovisual recording producer shall expire of 50 years from the time when such release occurred. \(\text{§}\ 66\ (5)\ \text{CA}\);

The rights of a broadcaster shall last for 50 years from releasing the broadcasting. \(\text{§}\ 68\ (5)\ \text{CA}\);

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation?

Yes.

If so, what is the term of protection?

Any person who, after the expiry of copyright protection, publish a previously unreleased work shall be entitled to the protection equivalent to the economic rights of the author. The rights shall last for 25 years from the releasing the work.

Contrary to Directive, Copyright Act requires publishing of a previously unreleased work. Therefore mere lawful communication to the public is not enough. On the other hand, Act is not precise on this requirement while in the second sentence legislator used the term release. As already stated above, according to the explicit provision \(\text{§}\ 13\ \text{CA}\), a work is released on the day of its first public performance, public presentation, publishing or making available to the public by the other manner. A work is published on the day when authorised public distribution of its reproductions commenced.

Could you please cite the relevant provisions of your national act?

\(\text{§}\ 52\ \text{CA}\);

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation?

The critical and scientific publications do not enjoy any special regime after the expiration of the copyright protection. Therefore, the only protection available, are general legal institutions such as moral rights, personality rights of author or unfair competition.

However, there is a domaine public payant system in Slovakia. Pursuant to \(\text{§}\ 10\ \text{et seq. Act 13/1993 Coll. on Art Funds}\) as amended, respective fee shall be paid when using public domain works. In our opinion, it is rather formal obligation as the enforcement by Art Funds is very weak. Hence the fees are probably paid by only limited number of subjects and almost on the “voluntary” basis (due to lack of enforcement).

If so, what is the term of protection?

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Could you please cite the relevant provisions of your national act?

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11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

The Copyright Act does not favour photographs. Thus general provisions on the copyright subject matter apply. Therefore photograph (as any other work in general) is protected by copyright only if it is the result of the author’s own creative intellectual activity and falls within the field of art or science. \(\text{§}\ 6\ (1)\ \text{and §}\ 7\ (1)(g)\ \text{CA}\);

12. What is the term of protection for original and unoriginal databases in your country?

In Slovakia, databases are protected by both, the copyright law \(\text{§}\ 6(2)\ \text{CA}\) and \(\text{§}\ 7\ (2)\ \text{CA}\) and sui generis right \(\text{§}\ 72\ \text{CA}\);
Original databases, protected by copyright, benefit from the general regime of the term protection of copyrighted works (please see the answer to question number 2).

Unoriginal databases, protected by sui generis right, shall be protected for 15 years from the first day of the year following the year in which the database was made. If the database is released during this period, the term of the database maker’s right shall commence on the first day of the year following the year in which the database was released.

Please cite the relevant provisions of your national act.

Term protection of original databases is governed by §21 CA and the term protection of non-original databases by § 76 CA;

13. Are any other categories of copyright works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)?

No.

If so, could you please cite the relevant provisions of your national act?

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14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

There is no special provision in relation to non-community nationals in the Copyright Act. The only provision on the term of protection vis-à-vis third countries is § 2(4) CA that states “The term of copyright in case of a work of a citizen of another country must not be longer than it is in the country of the work origin”. Even this provision does not distinguish between national of member state and national of non-member state.

Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

No.

15. Are moral rights in your country perpetual? (Please see Article 9 Term Directive.)

Moral rights are limited to author’s lifetime. However, post-mortem protection of the moral rights of author is perpetual. The same is the case with the general post-mortem personality rights protection, which the moral rights are considered to be part of. Post-mortem protection of moral rights is different in scope. Such protection may be claimed by the author’s close person according to § 116 Civil Code, association of authors, professional chamber and by the relevant collective management organization.

A close person shall be defined as a relative in direct line, brother or sister and the spouse; other persons in a family or other relation shall be considered close to each other if a detriment suffered by one of them is reasonably felt as own by the other. (§ 116 Civil Code);

Could you please cite the relevant provisions of your national act?

§17(2) and (3) CA;

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

Although Slovakia became member state on 1st of May 2004, current Copyright Act from 2003 was already in conformity with the Term Directive on the day of its first effectiveness - on 1st of January 2004. In fact, it was already the previous copyright act, Copyright Act No. 383/1997 Coll. of 5th of December 1997 (effective from 1st of January 1998), that changed the term protection to author’s lifetime plus 70 years after his death from lifetime plus 50 years as was legislated in the previous act (the Copyright Act 35/1965 Coll., effective until 31st of December 1997).

Based on transitional provisions in § 54 (1) of the Copyright Act 383/1997 Coll., the term of protection was regulated by this Act even if the term started prior the effectiveness of this Act (prior to 1st of January 1998).
However, such extension applied only to those works to which the economic rights did not expire before the effectiveness of this Act. Therefore if the economic rights of an author originated before 1st of January 1998 and still did not expire, they were extended to 70 years after death of the author. Otherwise extension did not apply.

The abovementioned regime applied also to performers, phonogram producers and broadcasters.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/the State via escheat etc.)? Is a similar distinction introduced by your national legislation?

No.

However, the Copyright Act states the special case when works fall into the public domain in relation to succession of economic rights even before their expiration. More specifically, if the author does not have heirs or if his heirs refuse to accept the descendant’s estate, the work shall become free for public domain, even before expiry of copyright protection. The only exception is the case of works of joint authorship, as when the co-author does not have heirs, the author’s share shall devolve to other co-authors (§ 53(2) CA). Therefore a general rule of Civil Code that if the inheritance is acquired by no heir it shall pass to the state, does not apply to the economic rights of author.

If so, could you please cite the relevant provisions of your national act?

- 18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle).

No.

Are there any similar additional exceptions in your country?

No.

If so, could you please cite the relevant provisions of your national act?

- 19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive?

No.

Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not?

- Could you please cite the relevant provisions of your national act?

- 20. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive?

No.

If so, please elaborate, preferably citing the relevant provisions of your national act.
26. Slovenia

Author: Dr. Maja Bogataj Jančič, LL. M, LL. M., Intellectual Property Institute (IPI), Rok Jerovšek (IPI), Luka Virag (IPI)

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.


2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The CRRA was adopted in 1995. It was published in the Official Gazette on 14 April 1995 and eventually came into force on 29 April 1995. During the drafting procedure, the relevant international copyright legislation was thoroughly examined. Although Slovenia was not a member of the European Union at the time and had no obligation to implement its directives, the CRRA was drafted de facto in accordance with the EU legislation in force at the time. Therefore, all the provisions regarding the term of protection in the CRRA were already then in accordance with the provisions of the council directive 93/98/EEC of 29 October 1993 harmonizing the term of protection of copyright and certain related rights. The mentioned directive was later amended with the adoption of the Term Directive. Due to the similarity of the provisions of the 93/98/EEC Directive and the Term Directive, the provisions of the CRRA are very similar or almost identical to those of the Term Directive.

Joint authorship is governed by Art. 60 CRRA (titled Co-authors): If the work was created by a number of authors, the term of protection mentioned in the foregoing Article (Art. 59: The copyright shall run for the life of the author and for 70 years after his death, unless otherwise provided by this Act), shall be calculated from the death of the last surviving co-author.

Collective works are governed by Art. 62 CRRA (titled Collective works): In case of collective works, the copyright shall run for 70 years after the lawful disclosure of the work.

Anonymous and pseudonymous works are governed by Art. 61 CRRA (titled Anonymous and pseudonymous works): Copyright in anonymous and pseudonymous works shall run for 70 years after the lawful disclosure of the work. When the pseudonym leaves no doubt as to the identity of the author, or if the author discloses his identity during the period referred to in the foregoing paragraph, the term of protection shall be that laid down in Article 59 of this Act.

Works published in parts, instalments, issues or episodes are governed by Art. 64 (Serial works): When, according to this Act, the term of protection is calculated from the day of lawful disclosure of the work, and the work is disclosed over a period of time in volumes, parts, sequels, issues, or series, the term of protection shall be calculated for each of these components separately.

Certain undisclosed works are governed by Art. 63 CRRA (Special term for certain undisclosed works): When the term of protection under this Act does not run from the death of the author or authors, and the work was not lawfully disclosed within 70 years from its creation, the copyright shall terminate with the expiration of this term.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

There are some differences in the definitions and legal aspects of works of joint authorship, collective works and compilations, however those terms are intertwined. The distinction between a work of joint authorship and a collective copyright work is primarily in the number of authors. According to legal doctrine, for a work to be deemed a collective work, at least 10-15 authors must participate. If the number of authors is smaller, the work is deemed to be a work of joint authorship. In works of joint authorship, the term of protection is calculated from the death of the last surviving co-author. In collective works, the term of protection is calculated from the date of publication of the work.

A compilation/collection, however, can be created by one author (e.g. a database) or various authors (e.g. an encyclopedia). The term of protection is calculated accordingly.
Art. 8 CRRA stipulates that collections of works or of other material, such as encyclopaedias, anthologies, databases, collections of documents, etc., which, by virtue of selection, coordination or arrangement of their contents, are individual intellectual creations, shall be deemed independent works.

Art. 100 CRRA stipulates that collective copyright work is a work created on the initiative and under the organization of a natural person or a legal entity ordering it, by the collaboration of a large number of coauthors, which is published and used under the name of the person ordering it (e.g. encyclopaedias, anthologies). A special contract must be concluded for the purpose of creating a collective work. If the conditions mentioned in the foregoing paragraph are not met, such contract is null and void. It shall be deemed that the economic rights and other rights of the authors to a collective work are exclusively and without limitations assigned to the person ordering the work, unless otherwise provided by contract.

Works of more than one author are governed by Art. 12 CRRA. It stipulates that if the work, created in collaboration of two or more persons, constitutes an inseparable whole, all co-authors of such work shall have a joint copyright in it. Deciding on the use of such work belongs jointly to all co-authors, however, an individual co-author may not oppose to it unreasonably or in bad faith. Co-authors' shares shall be determined in proportion to the extent of their respective contributions to the creation of the work, unless they are set otherwise by their agreement.

Compound works are governed by Art. 13 CRRA. It stipulates that provisions of Art. 12 shall apply mutatis mutandis, when several authors combine their works for the purpose of exploitation in common.

Duration of copyright on the abovementioned works is governed by Arts. 60, 62 and 65 CRRA.

Art. 60 CRRA stipulates that if the work was created by a number of authors, the term of protection mentioned in the foregoing Article, shall be calculated from the death of the last surviving co-author.

Art. 62 CRRA stipulates that in case of collective works, the copyright shall run for 70 years after the lawful disclosure of the work.

Art. 65 CRRA stipulates that insubstantial changes to the selection, adjustment or arrangement of the contents of a collection shall not extend the term of protection in that collection. "Insubstantial changes", within the meaning of the foregoing paragraph, are additions, deletions, or alterations to the selection or arrangement of the contents of a collection, which are necessary in order that this collection may continue to function in the way it was intended by its author.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

According to legal doctrine, co-written musical works are considered to be compound works in the sense of Art. 13 CRRA, i.e. multiple separate works.

- Collective works: encyclopaedias, anthologies, etc.
- Compilations/collections: encyclopaedias, anthologies, databases, collections of documents, etc.
- Works of joint authorship: scholar articles, monographs, etc.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

According to Art. 10, an author is a natural person who created the work. Legal doctrine in Slovenia established that a legal person cannot be the author of a work.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

In relation to cinematographic or audiovisual works, the CRRA governs co-authors other than the principle director in Art. 105. It stipulates that as co-authors of an audiovisual work shall be considered: 1. the author of the adaptation; 2. the author of the screenplay; 3. the author of the dialogue; 4. the director of photography; 5. the principal director; 6. the composer of music specifically created for use in the audiovisual work. If animation represents an essential element of the audiovisual work, the principal animator shall be considered as co-author of that work.

The copyright protection for audiovisual works is governed by Arts. 59 and 60 CRRA. The copyright shall run for the life of the author and for 70 years after his death, unless otherwise provided by this Act. If the work was
created by a number of authors, the mentioned term of protection shall be calculated from the death of the last surviving co-author.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No. According to Art. 9 CRRA, copyright protection shall not be afforded to official legislative, administrative and judicial texts.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The CRRA contains provisions very similar to those in the Term Directive.

Art. 127 stipulates that rights of a performer shall run for 50 years after the date of the performance. If the fixation of performance was lawfully published or lawfully communicated to the public within this period, the rights of a performer shall run for 50 years from either the first publication or from the first communication, whichever occurred earlier.

Art. 132 stipulates that the rights of the producer of phonograms shall last for 50 years after the fixation is made. If the phonogram is lawfully published during this period, the rights shall last 50 years from such first publication. If no such publication has taken place, but the phonogram has during this period been lawfully communicated to the public, the rights shall last 50 years from such first communication to the public.

However, there are no express provisions in the CRRA that would incorporate the provisions of Art 3/2 (2) of the Term Directive regarding expiry of the term of protection granted to the producers of phonograms pursuant to Art. 3 (2) of Directive 93/98/EEC in its version before amendment by Directive 2001/29/EEC.

Art. 136 stipulates that the rights of film producers shall run for 50 years from the time of the fixation. If a videogram is lawfully published or lawfully communicated to the public within this period, the rights of a film producer shall run for 50 years from the date of first publication or first communication to the public, whichever occurred earlier.

There is also no express definition of the term “film” which would directly correspond to the one contained in Art. 3 of the Term Directive. However, the term “audiovisual work” is defined in Art. 103 CRRA with the use of similar expressions. The mentioned article stipulates that audiovisual works according to this Act, are cinematographic films, television films, animated films, short music-videos, advertising films, documentaries and other audiovisual works, expressed by means of sequence of related moving images, with or without incorporated sound, irrespective of the nature of the medium in which the said works are embodied.

The term of protection of the rights of broadcasting organizations is governed by Art. 138 CRRA. It stipulates that said rights shall run for 50 years from the date of the first broadcast.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The CRRA contains a very similar provision in Art. 140. The latter stipulates that a person who for the first time lawfully publishes or communicates to the public a previously unpublished work in which the copyright has expired, shall enjoy the legal protection equal to that granted by economic rights and other rights of the author under the CRRA. The mentioned rights shall run for 25 years from the date of the first lawful publication or communication to the public of the work.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes. According to Art. 141 CRRA, a person who prepares the edition of a work in which the copyright has expired, which is the result of a scientific endeavours and which is essentially different from known editions of this work, shall enjoy the legal protection equal to that granted by economic rights and other rights of the author under this Act. The mentioned rights shall run for 30 years from the date of the first lawful publication of the work.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?
There are no specific provisions in the CRRA regarding this issue. Non-original photographs are protected as copyright works only if they are consistent with the conditions set out in Art. 5 CRRA. The latter stipulates that copyright works are individual intellectual creations in the domain of literature, science, and art, which are expressed in any mode, unless otherwise provided by the CRRA. As copyright works are considered in particular: 1. spoken works such as speeches, sermons, and lectures; 2. written works such as belles-lettres works, articles, manuals, studies, and computer programs; 3. musical works with or without words; 4. theatrical or theatrico-musical works, and works of puppetry; 5. choreographic works and works of pantomime; 6. photographic works and works produced by a process similar to photography; 7. audiovisual works; 8. works of fine art such as paintings, graphic works, and sculptures; 9. works of architecture such as sketches, plans, and built structures in the field of architecture, urban planning, and landscape architecture; 10. works of applied art and industrial design; 11. cartographic works; 12. presentations of a scientific, educational or technical nature (technical drawings, plans, sketches, tables, expert opinions, three-dimensional representations, and other works of similar nature).

The term of protection for photographs is governed by Art. 59 CRRA. It stipulates that the copyright shall run for the life of the author and for 70 years after his death.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

According to Art. 59 CRRA and legal doctrine, the standard term of protection for original databases (which is a form of a collection) shall run for the life of the author and for 70 years after his death. Pursuant to Art. 59 CRRA insubstantial changes to the selection, adjustment or arrangement of the contents of a collection shall not extend the term of protection in that collection. "Insubstantial changes" are additions, deletions, or alterations to the selection or arrangement of the contents of a collection, which are necessary in order that this collection may continue to function in the way it was intended by its author.

According to Art. 141f CRRA the rights of a maker of unoriginal databases shall last for 15 years after the completion of the making of the database. If the database is lawfully disclosed within this period, the rights shall last 15 years from such first disclosure. Any qualitatively or quantitatively substantial change to the contents of a database, which results in a qualitatively or quantitatively substantial new investment, shall qualify the database resulting from that investment for a new term of protection. A substantial change of contents includes also the accumulation of successive additions, deletions or alterations of the database.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

There are no such provisions in the CRRA. However, regarding sui generis rights, Slovenia has adopted the Protection of Topographies of Integrated Circuits Act (Official Gazette, No. 21/1995, 96/2002, 72003-UPB1, 60/2006, 81/2006-UPB2) available at the website of the World intellectual property organization http://www.wipo.int/wipolex/en/text.jsp?file_id=180849.

According to Art. 7 of the Protection of Topographies of Integrated Circuits Act, the exclusive rights shall cease application 10 years after the end of the following dates:
– the end of the calendar year in which the period ten years from the date the topography was first commercially exploited anywhere in the world expires; or
– the end of the calendar year following the expiry of the ten year period from the date a correct application was filed.

The exclusive rights shall expire before the period defined in the third paragraph of this Article if the respective fees are not paid or if the holder of the protected topography renounces protection in writing. Notwithstanding, if a topography has not been commercially exploited, the exclusive rights shall expire after 15 years from its fixation or encoding.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

As explained above, the Term Directive has not been explicitly implemented into Slovenian legislation.

Nevertheless, protection vis-à-vis third countries is governed by Art. 176 CRRA. The latter stipulates that the provisions of the CRRA shall protect the authors and holders of related rights who are citizens of the Republic of Slovenia or a European Union Member State, or have their residence or seat in the Republic of Slovenia. Other foreign natural persons or legal entities (foreigners) shall enjoy the same protection as the aforementioned persons if international convention or the CRRA so provides, or in case that factual reciprocity exists. Regardless
of the provisions of Chapter VIII CRRA, foreigners shall enjoy the protection according to the CRRA: 1. with respect to moral rights - in any case; 2. with respect to resale right and the right to remuneration for private and other internal reproduction - only if factual reciprocity exists. Art. 176 CRRA additionally stipulates that reciprocity must be proved by the person basing his claims on it and that provisions of the CRRA relating to the European Union Member States shall apply also to the European Economic Area Member States.

Prior to the adoption of the Term Directive, Slovenia has not accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2).

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

No. According to Art. 15 CRRA, copyright is an indivisible right to a work, from which emanate exclusive personal powers (moral rights), exclusive economic powers (economic rights), and other powers of the author (other rights of the author). Art. 59 CRRA further stipulates, that the copyright shall run for the life of the author and for 70 years after his death, unless otherwise provided by this Act. Therefore, neither moral nor material rights are perpetual and expire after the time frame, provided in Art. 59.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

As already noted above, the CRRA was adopted in 1995. It was published in the Official Gazette on 14 April 1995 and eventually came into force on 29 April 1995. All the provisions regarding the term of protection were already then in accordance with the provisions of the subsequently adopted Term Directive.

However, it may be noticed that the CRRA in 1995 prolonged the duration of rights as previously stipulated by the copyright legislation (e.g. the copyright protection expired 50 years after the author’s death). Therefore, certain provisions were adopted in order to regulate the transition. Art. 193 CRRA stipulates in the first paragraph that the CRRA applies to all works and performances of performers that were enjoying protection according to the Copyright Act (Official Gazette of the SFRY, No.19/1978, 24/1986, 21/19 90), at the time of its enactment. In the second paragraph it is provided that the CRRA applies to phonograms of producers of phonograms, with respect to which the term of 20 years has not yet elapsed from the time of their first fixation to the enactment of the CRRA. Pursuant to the third paragraph of Art. 193 CRRA, the CRRA applies to videograms, broadcasts and publishers’ editions, as subject matters of related rights, which were first fixed, broadcast or lawfully published after its enactment. Finally, the fourth paragraph of Art. 193 CRRA provides that the CRRA applies to databases as subject matter of related rights, the making of which was completed after 1 January 1983.

Additionally, a new transitional provision regarding certain resuscitation of rights was adopted in 2004 (Art. 24 of the Transitional and Final Provisions, CRRA-B, Official Gazette No. 43/2004 of 26 April 2004, the enforcement of Art. 24 was linked to Slovenia’s accession to the EU which took place on 1 May 2004). Namely, first paragraph of Art. 24 CRRA-B stipulates that, as of the date of the accession of the Republic of Slovenia to the European Union, the terms of protection under the CRRA shall also be applicable to those copyright works and subject matters of related rights that are not protected under Art. 193(1), (2) and (3) if they are protected on that date in at least one European Union Member State.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightsholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No.
20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No.

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No.
27. Spain

1. How have the exceptions of Article 1 of the Term Directive (Directive 2006/116/EC) in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Yes, they have been implemented. There are definitions of work of joint authorship, collective work and compound work (articles 7, 8, 9). A compound work is a new work which includes a preexistent work and the author needs authorization for such inclusion. Once obtained the compound work is treated as a work with the same term of protection (70 years after author's death).

The term of protection for these works (joint authorship and collective) is established on Art 28.

Work of joint authorship (included cinematographic or audiovisual works), 70 years after death of the last surviving author [Art 28.1]

Collective work, 70 years after the work is lawfully made available to the public [Art 28.2]. However if it is possible to divide the work in parts from different authors the rule shall be the one used for individual or joint authorship.

The anonymous or pseudonymous works have a term of protection of 70 years after the work is lawfully made available to the public [Art 27]. If the name of the author is revealed or the pseudonym leaves no doubt about the author, then the term of protection is the same as the work of a known author (70 years after author's death). If they were not made available the term of protection is calculated from the work creation.

Finally works published in parts, instalments, issues or episodes are also implemented in the Spanish legislation. Art 29 establishes that the term of protection of such works shall run for each item separately (as in the Directive).

2. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? Are co-written musical works considered to be works of joint authorship or collective works? What about cinematographic or audiovisual works? Can you think of other examples of works of joint authorship, collective works or compilations in your national act? Could you please cite the relevant provisions of your national act?

Yes, there are distinctions between works of joint authorship, collective works and compilations. Definition of work of joint authorship (Art 7), definition of collective work (Art 8), definition of compilation (Art 12). The term of protection is:

Work of joint authorship (included cinematographic or audiovisual works ), 70 years after death of the last surviving author [Art 28.1]

Collective work, 70 years after the work is lawfully made available to the public [Art 28.2]. However if it is possible to divide the work in parts from different authors the rule shall be the one used for individual or joint authorship.

There is no special provision for the term of protection of a compilation. It shall be treated as a work, a collective work or a work of joint authorship.

There is no special provision for co-written musical works. However they could fall in a work of joint authorship and also in the definition of compound work.

3. Are cinematographic or audiovisual works defined in your national legislation? Are other co-authors assigned to such a work, other than the principle director in accordance with Article 2 of the Term Directive? In whom is copyright of such a work vested in your national legislation (please see Article 14bis (2) Berne Convention)?

Yes, the inclusion of cinematographic or audiovisual works is in the list of protected works [Art 10. d)], and they have a special section [Titulo VI - Arts 86-94] with a definition of authors (art 87) among them: director, writer (screenplay, adaptation, dialogs), and the author of the music score.

The law establishes (art 88) that the exploitation rights (copyright) of an audiovisual work are transferred to the producer by means of the contract if there is no special provision against it.

4. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation and, if so, what is the term of protection? Did situations corresponding to that described in Article 3(2) of the consolidated version of the Term Directive, involving phonograms that were not afforded protection under the Directive 93/98/EEC, but would have qualified under Directive 2001/29/EEC, arise in your jurisdiction? Was Article 3(2) of the consolidated version of the Term Directive implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Yes, the duration of the related rights has been implemented and is the same as in the directive. I do not know any of the abovementioned situations.

Art 3(2) of the Directive has been implemented in our national legislation in Art 119. In fact the article has been modified in 2006.
5. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation and, if so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Yes. The term of protection is 25 years after the work is lawfully made available to the public. It also applies for nonprotected works published with a special typography. Art 129 has the definitions and art 130 the terms of protection.

6. Has Article 5 of the Term Directive on critical and scientific publications been implemented in your national legislation and, if so, what is the term of protection? Could you please cite the relevant provisions of your national act?

No, it has not been implemented.

7. Has Article 6 of the Term Directive on the protection of photographs been implemented in your national legislation and, if so, what is the term of protection? Could you please cite the relevant provisions of your national act? Are non-original photographs protected under your national legislation in addition to original ones?

In the Spanish legislation there are two different protections for photographs. The original photographs are included as a work and therefore the term of protection is the same as any work (70 years after author’s death). The protection for original photographs as works is listed in Art 10. h) where there are examples of works.

The second protection for photographs is a related right. There is a section for simple (mere) photographs or similar reproductions whose term of protection is 25 years after the photograph was taken or the reproduction was made. This protection for non-original photographs is on Art 128.

8. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Art 7 has been implemented in our current law in articles 163-167. The protection is not only for authors but for related rights holders as performers, producers or database creators. These articles were included before the Directive.

9. Are moral rights in your country perpetual? (Please see Article 9 Term Directive.) Could you please cite the relevant provision of your national act?

In Spain, we have seven moral rights [Art 14] and two of them are perpetual [Art 15.1] The perpetual moral rights are the attribution of authorship and the integrity of the work.

10. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights over works in which copyright or related rights subsist being resuscitated? If so, for how long? Did your national act specify whose rights were being revived (e.g. those of the heirs of the author, the last rightholder to acquire the copyright prior to its termination through assignment or other transfer of rights, another party)? Did your national act take advantage of the latitude as to cinematographic or audiovisual works provided by Article 10 (4) Term Directive? Please cite the relevant provisions of your national act.

In Spain the Term Directive was included in 1995 after the Copyright Duration Directive (93/98/EEC)

11. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No

12. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No

13. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that
affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

The current copyright law establishes a term of protection for works of 70 years after author's date. However the law of 1897 established a longer protection (80 years post mortem) and therefore when the law was modified in 1987 there was a special provision for authors who died before the 7th of December 1987 (4th Transitional Provision). All the modifications made in the law since then have included this provision. It applies to any EU authors or EU residents.

14. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

No.
28. Sweden

Author: Johan Axhamn

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

The Swedish Act (1960:729) on copyright in Literary and Artistic works, as amended. Hereafter referred to as SCA. (More specifically, the directive 93/98/EEC was implemented into Swedish law by Act 1995:1273 and related government bill (proposition) 1994/95:151 on amendments to the Act (1960:729) on copyright in literary and artistic works).

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

If a work has two or more authors, whose contributions do not constitute independent works, the term of protection subsist until the end of the seventieth year after the year in which the last surviving author deceased.

In the case of anonymous or pseudonymous works, the term of protection subsist until the end of the seventieth year after the year in which the work was made public. If the work consists of two or more interconnected parts, the term shall be calculated separately for each part. If the author reveals his identity within this term, the "normal" rules on term of protection shall apply, i.e. the protection subsists until the end of the seventieth year after the year in which the author deceased.

For works which have not been made public and whose author is not known, the copyright subsists until the end of the seventieth year in which the work was created.

The relevant provisions of the SCA are sections 43 and 44:

Section 43
Copyright in a work shall subsist until the end of the seventieth year after the year in which the author deceased or, in the case of a work referred to in Section 6, after the year in which the last surviving author deceased. However, copyright in a cinematographic work subsists, instead, to the end of the seventieth year after the death of the last deceased of one of the following persons, namely the principal director, the author of the screenplay, the author of the dialogue or the composer of the music specifically created for the work.

Section 44
In the case of a work which has been made public without mention of the author's name or generally known pseudonym or signature, the copyright shall subsist until the end of the seventieth year after the year in which the work was made public. If the work consists of two or more interconnected parts, the term shall be calculated separately for each part.

If the author reveals his identity within the term mentioned in the first Paragraph, the provisions of Section 43 shall apply.

For works which have not been made public and whose author is not known, the copyright subsists until the end of the seventieth year after the year in which the work was created.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

No clear distinction is made between "works of joint authorship" and "collective works". Section 6 of the SCA states that "If a work has two or more authors, whose contributions do not constitute independent works, the copyright shall belong to the authors jointly. However, each one of them is entitled to bring an action for infringement." As regards compilations, section 5 of the SCA states that "A person who, by combining works or parts of works, creates a composite literary or artistic work shall have copyright therein, but his right shall be without prejudice to the rights in the individual works."

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

This question cannot be given a general answer, but has to be decided on the circumstances of each case. For example, in a case from the Supreme court (case NJA 1975 s 679), the court held that the collaboration that had occurred between the writer (lyricist) and the composer could not be deemed to have been such that it resulted in
of a work of joint authorship (collective work). Rather, the lyrics and the music were deemed to be separate (independent) works.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

In general, only natural persons can be authors of works. This rule applies also to computer programs. However, the copyright in a computer program created by an employee as part of his tasks or following instructions by the employer is transferred to the employer unless otherwise agreed in contract. This provision does not affect the term of protection for computer programs.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

Cinematographic or audiovisual works are (normally) deemed to be works of joint authorship (collective works). Thus, anyone who has creatively contributed to an audiovisual work is deemed to be one of its authors. However, the term of protection for an audiovisual work subsists to the end of the seventieth year after the death of the last deceased of one of the following persons, namely the director, the author of the screenplay, the author of the dialogue or the composer of the music specifically created for the work. Thus, that there are also other persons who are deemed to be the author of the audiovisual work does not affect its term of protection.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The provisions in the SCA on copyright protection for official documents are (very) complicated. In general, copyright does not subsist in i) laws and other regulations, ii) decisions by public authorities, ii) reports by Swedish public authorities, and iv) official translations of such texts. However, copyright subsists in works of the following kinds when they form part of a document just mentioned: i) maps, ii) works of drawing, painting or engraving, iii) musical works, or iv) works of poetry. There are, however, additional provisions regarding official documents. For clarification, I cite the relevant provisions of the SCA:

Section 9
Copyright does not subsist in
1. laws and other regulations,
2. decisions by public authorities,
3. reports by Swedish public authorities,
4. official translations of texts mentioned under 1.-3.

However, copyright subsists in works of the following kinds when they form part of a document mentioned in the first Paragraph:
1. maps,
2. works of drawing, painting or engraving,
3. musical works, or
4. works of poetry.

Section 26
Anyone is entitled to use oral or written statements
1. before public authorities,
2. in government or municipal representative bodies,
3. in public debates on public matters,
4. at public questionings on such matters.

However, in the application of the provisions in the first paragraph it shall be observed,
1. that writings cited as evidence, reports and similar works may be used only in connection with a report concerning the legal proceedings or case in which they have appeared and only to the extent necessary for the purpose of such a report,
2. that the author has an exclusive right to publish compilations of his statements, and
3. that what is stated during questionings as mentioned in the first Paragraph, item 4. must not be used, on the basis of that provision, in sound radio or television broadcasts.

Section 26 a
Anyone is entitled to use works which form part of the documents mentioned in Article 9, first paragraph, and which are of the kind mentioned in Section 9, second paragraph, items 2 to 4. The author is entitled to remuneration except when the use occurs in connection with
1. the activities of a public authority,
2. a report of a legal proceeding or a case in which the work appears and the work is used only to the extent necessary for the information purpose.

Anyone is entitled to use documents which are prepared by Swedish public authorities but which are not such as are mentioned in Section 9, first Paragraph.

The second Paragraph does not apply to
1. maps,
2. technical models,
3. computer programs,
4. works created for educational purposes,
5. works which are the result of scientific research,
6. works of drawing, painting or engraving,
7. musical works,
8. works of poetry, or
9. works copies of which are made available to the public through public authorities in connection with commercial activities.

Section 26 b
Notwithstanding copyright therein, official documents shall be made available to the public as prescribed in Chapter 2 of the Freedom of the Press Act.

Copyright does not prevent the use of a work in the interest of the administration of justice or of public security.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The rights of performing artists are regulated in section 45 of the SCA. According to paragraph 2 of this section, the protection of a performance (of a literary or artistic work or of an expression of folklore) last until the expiry of the fiftieth year from the year when the performance took place or, if the fixation has been published or made public within fifty years from the performance, from the year when the fixation was first published or made public.

The rights of producers of recordings of sound and of images are regulated in section 46 of the SCA. According to paragraph 2 of this section, the rights to a such a recording last until fifty years have elapsed from the year in which the recording was made. If a sound recording has been published within this period, the rights last, instead, until the expiry of the fiftieth year from the year in which the sound recording was first published. If the sound recording is not published during the said period but is made public during the same period, the rights last, instead, until the expiry of the fiftieth year from the year in which the sound recording was first made public. If a recording of moving images has been published or made public within fifty years from the recording, the rights last, instead, until fifty years have expired from the year in which the recording of moving images was first published or made public.

The rights of sound radio and television organizations are regulated in section 48 of the SCA. According to paragraph 2 of this section, the rights to exploit a sound radio or television broadcast last until the expiry of the fiftieth year from the year in which the broadcast took place.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The protection of previously unpublished works are regulated in section 44 a of the SCA. This provision makes reference to sections 43 and 44 of the SCA, which has been cited in the answer to question 2 above.

Section 44 a
Where a work has not been published within the term referred to in Section 43 or 44, the person who thereafter for the first time published or makes public the work shall benefit from such a right in the work which corresponds to the economic rights of the copyright. The right subsists until the end of the twenty-fifth year after the year in which the work was published or made public.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

The SCA has no special provision on critical and scientific works. Such works are normally protected as literary works and the same rules apply for their protection as for other categories of works (see sections 43, 44 and 44 a cited under questions 2 and 9 above).
11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

Yes, non-original photographs are protected by the SCA. According to section 49 a of the SCA, anyone who has prepared a photographic picture has an exclusive right to make copies of the picture and to make it available to the public. As a photographic picture is considered also a picture that has been prepared by a process analogous to photography.

According to paragraph 3 of the said section, “the right last until fifty years have elapsed from the year in which the picture was prepared.”

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

The rights of producers of catalogues and databases – “a catalogue, a table or another similar product in which a large number of information items have been compiled or which is the result of a significant investment” – are regulated in section 49 of the SCA.

According to paragraph 2 of this section, the term of protection of such rights lasts until fifteen years have elapsed from the year in which the product was completed. If the product has been made available to the public within fifteen years from the completion of the product, the right shall, however, last until fifteen years have elapses from the year in which the product was made available to the public.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

No.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Article 7 of the directive did not result in any amendments of the Swedish law for the protection of works from third countries. Sweden does not give protection for a longer term than that given in the country of origin or the country where the performance first occurred.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

Moral rights are not perpetual in Swedish law. Rather, the same term of protection applies to moral rights as for economic rights (see answer to questions 2 and 9 above).

However, the SCA provides for a special provision for the perpetual protection of the “cultural interests”. According to section 51 of the SCA, if a literary or artistic work is performed or reproduced in a manner which violates cultural interests, a court may, upon action by an authority appointed by the Government, issue an injunction prohibiting such use, under penalty of a fine. This provision does not apply during the lifetime of the author. This provision also applies to non-original photographs.

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The term of copyright was extended from 50 to 70 years on January 1, 1996, as a result of the implementation of the directive 93/98/EEC. At the same time, transitional provisions were issued addressing in particular the subject of revival of the protection for works for which the previous term of protection had expired. The transitional provisions are complex; however, as a general principle, amendments involving the extension of preexisting rights apply to works created before the new legislation came into force. Consequently, there is revival of the protection for works by Swedish authors deceased between 1925 and 1945. The same applies to works by nationals within the European Economic Area. With regard to nationals from outside the EEA, there is no revival if the protection in the country of origin has expired.
Before 1 January 2006, the term of protection was calculated from the year in which the last surviving author died. A transitional provision from the amendment in 1995 by which the term of protection was extended from 50 to 70 years stipulates that if the term of protection for a specific audiovisual work becomes shorter than would have been the case if older provisions applied, the older provisions do indeed apply. The result is that an audiovisual work remains protected, even though 70 years have passed since the death of the persons listed in Section 43 of the SCA (see answer to question 2 above) provided that less than 50 years have passed since the death of some other recognized coauthor listed in that provision, e.g., the cinematographer.

Transitional provisions


1. This Act comes into force on 1 January 1996.
2. The new rules apply also to works which have been created before the entry into force [of the new provisions, my comment].
3. The new rules do not apply with regard to actions taken or rights acquired before the entry into force. The copies/reproductions of a work produced under the earlier provisions may be freely distributed and displayed.
4. If anyone before the end of copyright term of protection according to the previous rules but before the entry into force of the new rules have begun to dispose of a work by making copies of it or by making it available to the public, he may, notwithstanding the new provisions continue the planned activity as far as is necessary and to a usual/normal extent, however not after 1 January 2000. Anyone who has taken significant steps to reproduce the work or to make it available to the public has a similar right of disposal. The copies of a work produced under these rules may be freely distributed and displayed. Section 19, second paragraph and section 26 j shall, however, still apply.
5. If, according to the new rules, the term of protection for a given work is shorter than it would have been according to the previous rules, the previous rules shall apply. The provisions in the third paragraph of section 44 shall, however, always apply.
6. The provisions of paragraphs 2-5 shall also apply to performances and recordings mentioned in sections 45 and 46 of the SCA.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No. However, the author may, with binding effect for the surviving spouse and heirs, give directions in his will concerning the exercise of copyright or authorise somebody else to give such directions.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

No, Sweden does not have similar provisions.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

Please see answer to question 16.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

Swedish law does not provide for a Domaine Public Payant or an equivalent regime. However, Outside the copyright sphere, there is, a Regulation on the Swedish Author’s Fund “Förrådning om Sveriges Författarfond”). On behalf of the State, the Swedish Authors’ Fund (“Sveriges författarfond”) administers the Public Lending Remuneration (“Bibliotekektersättning”). This scheme compensates authors, translators, and illustrators in the form of individual remuneration corresponding to the lending frequency or in the form of guaranteed remuneration and grants, pensions etc.
21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

N/A.
29. Switzerland

Author: Ivan Cherpillod

1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.


2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

Switzerland is not an EU Member and therefore has not implemented the Term Directive.

Protection expires:
- In the case of computer programs, 50 years after the author’s death
- As regards other works, 70 years after the author’s death.

If it must be assumed that the author has been dead for over 50 years (computer programs) or 70 years (other works), no protection subsists anymore.

The term of protection for works of joint authorship is defined as follows:
- In case of computer programs, protection will lapse 50 years after the death of the last surviving joint author;
- As regards all other works, it will lapse 70 years after the death of the last surviving joint author;
- If the individual contributions may be separated, protection for each contribution will lapse 50 (computer programs) or 70 years (other works) after the death of the author concerned

In the case of films and other audiovisual works, calculation of the term of protection is made by reference to the director (Regisseur/réalisateur) only.

As regards works for which the author is unknown, their protection ends 70 years after they have been divulged or, if they have been divulged in instalments, 70 years after the last instalment. If the identity of the author is made known before expiry of this term, protection of the work will end 70 years after the death of the author (50 years for computer programs)

The term of protection is calculated as from December 31 of the year in which the event determining calculation occurred.

The relevant provisions are the following (German and French original text):

Art. 29 Im Allgemeinen

1 Ein Werk ist urheberrechtlich geschützt, sobald es geschaffen ist, unabhängig davon, ob es auf einem Träger festgehalten ist oder nicht.

2 Der Schutz erlischt:

a. 50 Jahre nach dem Tod des Urhebers oder der Urheberin für Computerprogramme

b. 70 Jahre nach dem Tod des Urhebers oder der Urheberin für alle anderen Werke.

3 Muss angenommen werden, der Urheber oder die Urheberin sei seit mehr als 50 beziehungsweise 70 Jahren tot, so besteht kein Schutz mehr.

Art. 29 Généralités

1 L’œuvre, qu’elle soit fixée sur un support matériel ou non, est protégée par le droit d’auteur dès sa création.

2 La protection prend fin:

a. pour les logiciels, 50 ans après le décès de l’auteur

b. pour toutes les autres œuvres, 70 ans après le décès de l’auteur.

3 La protection cesse s’il y a lieu d’admettre que l’auteur est décédé depuis plus de 50 ou respectivement 70 ans.
Art. 30 Miturheberschaft

1 Haben mehrere Personen an der Schaffung eines Werks mitgewirkt (Art. 7), so erlischt der Schutz:
   a. 50 Jahre nach dem Tod der zuletzt verstorbenen Person für Computerprogramme
   b. 70 Jahre nach dem Tod der zuletzt verstorbenen Person für alle anderen Werke.

2 Lassen sich die einzelnen Beiträge trennen, so erlischt der Schutz der selbständig verwendbaren Beiträge 50 beziehungsweise 70 Jahre nach dem Tod des jeweiligen Urhebers oder der jeweiligen Urheberin.

3 Bei Filmen und anderen audiovisuellen Werken fällt für die Berechnung der Schutzdauer nur der Regisseur oder die Regisseurin in Betracht.

Art. 30 Coauteurs

1 Si l’œuvre a été créée par plusieurs personnes (art. 7), la protection prend fin:
   a. pour les logiciels, 50 ans après le décès du dernier coauteur survivant
   b. pour toutes les autres œuvres, 70 ans après le décès du dernier coauteur survivant.

2 Si les apports respectifs peuvent être disjoints, la protection de chacun d’eux prend fin 50 ou respectivement 70 ans après le décès de son auteur.

3 Pour calculer la durée de protection des films et autres œuvres audiovisuelles, on ne prend en considération que la date de décès du réalisateur.

Art. 31 Unbekannte Urheberschaft

1 Ist der Urheber oder die Urheberin eines Werks unbekannt, so erlischt dessen Schutz 70 Jahre nach der Veröffentlichung oder, wenn das Werk in Lieferungen veröffentlicht wurde, 70 Jahre nach der letzten Lieferung.

2 Wird vor Ablauf dieser Schutzfrist allgemein bekannt, welche Person das Werk geschaffen hat, so erlischt der Schutz:
   a. 50 Jahre nach ihrem Tod für Computerprogramme;
   b. 70 Jahre nach ihrem Tod für alle anderen Werke.

Art. 31 Auteur inconnu

1 Lorsque l’auteur est inconnu, la protection de l’œuvre prend fin 70 ans après qu’elle a été divulguée ou, si elle l’a été par livraisons, 70 ans après la dernière livraison.

2 Lorsque l’identité de l’auteur est rendue publique avant l’expiration du délai précité, la protection de l’œuvre prend fin:
   a. pour les logiciels, 50 ans après le décès de l’auteur
   b. pour toutes les autres œuvres, 70 ans après le décès de l’auteur.

Art. 32 Berechnung

Die Schutzdauer wird vom 31. Dezember desjenigen Jahres an berechnet, in dem das für die Berechnung massgebende Ereignis eingetreten ist.

Art. 32 Computation du délai de protection

Le délai de protection commence à courir le 31 décembre de l’année dans laquelle s’est produit l’événement déterminant.

Art. 39 Schutzdauer

1 Der Schutz beginnt mit der Darbietung des Werks oder der Ausdrucksform der Volkskunst durch die ausübenden Künstler und Künstlerinnen, mit der Veröffentlichung des Ton- oder Tonbildträgers oder mit seiner
Herstellung, wenn keine Veröffentlichung erfolgt, sowie mit der Ausstrahlung der Sendung; er erlischt nach 50 Jahren.

1bis Das Recht auf Anerkennung der Interpreteneigenschaft nach Artikel 33a Absatz 1 erlischt mit dem Tod des ausübenden Künstlers oder der ausübenden Künstlerin, jedoch nicht vor dem Ablauf der Schutzfrist nach Absatz 1.

2 Die Schutzdauer wird vom 31. Dezember desjenigen Jahres an berechnet, in dem das für die Berechnung massgebende Ereignis eingetreten ist.

Art. 39 Durée de la protection

1 La protection commence avec l’exécution de l’œuvre ou de l’expression du folklore par l’artiste interprète, avec la publication du phonogramme ou du vidéogramme, ou avec sa confection s’il n’a pas fait l’objet d’une publication, ou avec la diffusion de l’émission; elle prend fin après 50 ans.

1bis Le droit de faire reconnaître sa qualité d’artiste interprète conformément à l’art. 33a, al. 1, prend fin avec le décès de l’artiste interprète, mais pas avant l’expiration du délai de protection prévu à l’al. 1.

2 Le délai de protection commence à courir le 31 décembre de l’année dans laquelle s’est produit l’événement déterminant.

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

There is no distinction anymore between works of joint authorship and collective works, but the rules on joint authorship contain a special rule for collective works in which individual contributions may be separated (if individual contributions may be separated, each joint author may use his own contribution independently, unless such use impairs the exploitation of the joint work: art. 7 par. 4 LDA).

Compilations may constitute works of joint authorship if they have been created by several authors.

Where two or more persons have contributed as authors to the creation of a work, copyright belongs to all such persons jointly (art. 7 par. 1).

The term of protection for works of joint authorship is defined as follows:
- In case of computer programs, protection will lapse 50 years after the death of the last surviving joint author
- As regards all other works, it will lapse 70 years after the death of the last surviving joint author
- If the individual contributions may be separated, protection for each contribution will lapse 50 (computer programs) or 70 years (other works) after the death of the author concerned
- In the case of films and other audiovisual works, calculation of the term of protection is made by reference to the director (Régisseur/réalisateur) only.

The relevant provisions are the following (German and French original text):

Art. 7 Miturheberschaft

1 Haben mehrere Personen als Urheber oder Urheberinnen an der Schaffung eines Werks mitgewirkt, so steht ihnen das Urheberrecht gemeinschaftlich zu.

2 Haben sie nichts anderes vereinbart, so können sie das Werk nur mit Zustimmung aller verwenden; die Zustimmung darf nicht wider Treu und Glauben verweigert werden.

3 Jeder Miturheber und jede Miturheberin kann Rechtsverletzungen selbständig verfolgen, jedoch nur Leistung an alle fordern.

4 Lassen sich die einzelnen Beiträge trennen und ist nichts anderes vereinbart, so darf jeder Miturheber und jede Miturheberin den eigenen Beitrag selbständig verwenden, wenn dadurch die Verwertung des gemeinsamen Werkes nicht beeinträchtigt wird.

Art. 7 Qualité de coauteur

1 Lorsque plusieurs personnes ont concouru en qualité d’auteurs à la création d’une œuvre, le droit d’auteur leur appartient en commun.
2 Sauf convention contraire, les coauteurs ne peuvent utiliser l’œuvre que d’un commun accord; aucun d’eux ne peut refuser son accord pour des motifs contraires aux règles de la bonne foi.

3 En cas de violation du droit d’auteur, chacun des coauteurs a qualité pour intenter action; ils ne peuvent toutefois le faire que pour le compte de tous.

4 Si les apports respectifs des auteurs peuvent être disjoints, chaque auteur peut, sauf convention contraire, utiliser séparément son apport, à condition que l’exploitation de l’œuvre commune n’en soit pas affectée.

Art. 30 Miturheberschaft

1 Haben mehrere Personen an der Schaffung eines Werks mitgewirkt (Art. 7), so erlischt der Schutz:
   b. 50 Jahre nach dem Tod der zuletzt verstorbenen Person für Computerprogramme
   b. 70 Jahre nach dem Tod der zuletzt verstorbenen Person für alle anderen Werke.

2 Lassen sich die einzelnen Beiträge trennen, so erlischt der Schutz der selbständig verwendbaren Beiträge 50 beziehungsweise 70 Jahre nach dem Tod des jeweiligen Urhebers oder der jeweiligen Urheberin.

3 Bei Filmen und anderen audiovisuellen Werken fällt für die Berechnung der Schutzdauer nur der Regisseur oder die Regisseurin in Betracht.

Art. 30 Coauteurs

1 Si l’œuvre a été créée par plusieurs personnes (art. 7), la protection prend fin:
   b. pour les logiciels, 50 ans après le décès du dernier coauteur survivant
   b. pour toutes les autres œuvres, 70 ans après le décès du dernier coauteur survivant.

2 Si les apports respectifs peuvent être disjoints, la protection de chacun d’eux prend fin 50 ou respectivement 70 ans après le décès de son auteur.

3 Pour calculer la durée de protection des films et autres œuvres audiovisuelles, on ne prend en considération que la date de décès du réalisateur.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works will be works of joint authorship. If each contribution (e.g. music and lyrics) may be separated, each joint author may use his own contribution independently, unless such use impairs the exploitation of the joint work (art. 7 par. 4 LDA).

The Swiss Act mentions films and other audiovisual works (art. 30 par. 3), but any work that has been created jointly by several authors will be a work of joint authorship.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

No, a legal person cannot be the original author.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

In the case of films and other audiovisual works, calculation of the term of protection is made by reference to the director (Regisseur/réalisateur) only. However, if the music or the scenario is an independent work, its term of protection will be computed like for any other independent work.

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Laws, ordinances, international treaties and other official instruments, as well as decisions, records and reports of authorities and public administrations are not protected by copyright.

Art. 5 Nicht geschützte Werke

1 Durch das Urheberrecht nicht geschützt sind:
a. Gesetze, Verordnungen, völkerrechtliche Verträge und andere amtliche Erlasse

b. Zahlungsmittel

c. Entscheidungen, Protokolle und Berichte von Behörden und öffentlichen Verwaltungen

d. Patentschriften und veröffentlichte Patentgesuche.

2 Ebenfalls nicht geschützt sind amtliche oder gesetzlich geforderte Sammlungen und Übersetzungen der Werke nach Absatz 1.

Art. 5 Œuvres non protégées

1 Ne sont pas protégés par le droit d'auteur:

a. les lois, ordonnances, accords internationaux et autres actes officiels

b. les moyens de paiement

c. les décisions, procès-verbaux et rapports qui émanent des autorités ou des administrations publiques

d. les fascicules de brevet et les publications de demandes de brevet.

2 Ne sont pas non plus protégés, les recueils et les traductions, officiels ou exigés par la loi, des œuvres mentionnées à l’al. 1.

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Switzerland is not an EU Member and therefore has not implemented the Term Directive.

For related rights, protection begins with performance of the work or the expression of folklore, with the publication of the phonogram or videogram (or its production if it is not published) and with the transmission of broadcast; it ends after 50 years.

The right to be recognized as performing artist ends with the death of the performing artist, but not before expiry of the term of protection in accordance with the preceding paragraph (i.e. 50 years from performance).

The term of protection is calculated as from December 31 of the year in which the event determining calculation occurred.

As regards the protection of the performing artist against alterations of his or her performance, it is governed by the general provisions of the Civil Code regarding protection of personality. Therefore, it ends with the death of the performing artist.

Art. 39 Schutzdauer

1 Der Schutz beginnt mit der Darbietung des Werks oder der Ausdrucksform der Volkskunst durch die ausübenden Künstler und Künstlerinnen, mit der Veröffentlichung des Ton- oder Tonbildträgers oder mit seiner Herstellung, wenn keine Veröffentlichung erfolgt, sowie mit der Ausstrahlung der Sendung; er erlischt nach 50 Jahren.

1bis Das Recht auf Anerkennung der Interpreteneigenschaft nach Artikel 33a Absatz 1 erlischt mit dem Tod des ausübenden Künstlers oder der ausübenden Künstlerin, jedoch nicht vor dem Ablauf der Schutzfrist nach Absatz 1.

2 Die Schutzdauer wird vom 31. Dezember desjenigen Jahres an berechnet, in dem das für die Berechnung massgebende Ereignis eingetreten ist.

Art. 39 Durée de la protection

1 La protection commence avec l’exécution de l’œuvre ou de l’expression du folklore par l’artiste interprète, avec la publication du phonogramme ou du vidéogramme, ou avec sa confection s’il n’a pas fait l’objet d’une publication, ou avec la diffusion de l’émission; elle prend fin après 50 ans.
Le droit de faire reconnaître sa qualité d'artiste interprète conformément à l’art. 33a, al. 1, prend fin avec le décès de l’artiste interprète, mais pas avant l’expiration du délai de protection prévu à l’al. 1.

Le délai de protection commence à courir le 31 décembre de l’année dans laquelle s’est produit l’événement déterminant.

Art. 33a Droits moraux de l’artiste interprète

L’artiste interprète a le droit de faire reconnaître sa qualité d’artiste interprète pour sa prestation.

La protection de l’artiste interprète contre les altérations apportées à sa prestation est régie par les art. 28 à 28i du code civil.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

There are no rules regarding the term of protection for unpublished works. Like other works, their protection starts with their creation.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

There are no special rules in this respect. If this “publication” fulfils the criteria for copyright protection (literary or artistic creation with individual character), it will be protected like any other work.

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

There are no special rules in this respect. If a photograph does not comply with the requirements for protection, it is not protected by copyright. Some protection against its copying with technical means of reproduction may nevertheless fall under the scope of Art. 5 litt. c of the Act against unfair competition. The protection granted by this provision is not specifically limited in time, but cannot be invoked if the investments made for the work have been amortized, as decided by the Federal Supreme Court.

Art. 5 Verwertung fremder Leistung

Unlauter handelt insbesondere, wer: (…) c. das marktreife Arbeitsergebnis eines andern ohne angemessenen eigenen Aufwand durch technische Reproduktionsverfahren als solches übernimmt und verwertet.

Art. 5 Exploitation d’une prestation d’autrui

Agit de façon déloyale celui qui, notamment: (…) c. reprend grâce à des procédés techniques de reproduction et sans sacrifice correspondant le résultat de travail d’un tiers prêt à être mis sur le marché et l’exploite comme tel.

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.

There are no special rules in this respect. If a database does not comply with the requirements for protection, it is not protected by copyright. Some protection against its copying with technical means of reproduction may nevertheless fall under the scope of Art. 5 litt. c of the Act against unfair competition. The protection granted by this provision is not specifically limited in time, but cannot be invoked if the investments made for the work have been amortized (see above).

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as
to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

See above as regards computer programs.

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

There are no rules in this respect in the Swiss Copyright Act. Although there are no court decisions on this point, the Swiss legal literature generally considers that Switzerland does not apply the rules on comparison of terms.

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

No, they are subject to the same rules as regards copyright. Not however the special rules regarding the moral rights of the performing artist (quoted before).

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The 70 years post mortem auctoris term has been introduced by the Act of October 9, 1992.

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/ the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

There is no such rule under Swiss law.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

There is no such rule under Swiss law.

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

No.

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

No.
1. Please cite the legal act which governs the term of protection of copyright and related rights in your country.

**Copyright, Designs and Patents Act (CDPA) 1988, ss 12-15A.**

2. How have the exceptions of Article 1 of the Term Directive in relation to works of joint authorship, collective works, anonymous and pseudonymous works and works published in parts, instalments, issues or episodes been implemented in your national legislation? Could you please cite the relevant provisions of your national act?

The copyright term for works of joint authorship is determined by reference to the date of the death of the author who died last (CDPA s 12(8)(a)(i)).

Anonymous and pseudonymous works are covered by the concept of "unknown authorship". For works of unknown authorship, namely works whose author’s identity is unknown and it is not possible to be found by reasonable inquiry (CDPA s 9(4), (5)), the duration of copyright is limited to 70 years from the date that the work was first made available to the public (or 70 years from the date that the work was made, if it is not made available before the expiry of this period). (CDPA s 12(3)).

3. Is there a distinction made between works of joint authorship, collective works and compilations in your national jurisdiction? If so, what is the definition for each of these categories and how is the term of protection for such works calculated? In particular, does joint authorship in particular presuppose that the contributions of several authors are inseparable? Could you please cite the relevant provisions of your national act?

There is no clear distinction between collective works and works of joint authorship in the CDPA 1988. Section 10(1) of the CDPA 1988 defines a work of joint authorship as “a work produced by the collaboration of two or more authors in which the contribution of each is not distinct from the contribution of the other author or authors”. Three are the key elements of this definition: each author should have contributed to the making of the work, the work should be a product of collaboration between the authors, and the respective contributions should not be distinct or separate from each other. The definition of joint authorship enables distinguishing the so-called collective works, i.e. works produced by collaboration where the contributions of the authors are separate or distinct from each other. Section 178 of the CDPA however provides an unhelpful definition of collective works which also includes works of joint authorship.

4. Are co-written musical works considered to be works of joint authorship or multiple separate works in your national jurisdiction? Can you think of other examples of works of joint authorship, collective works or compilations in your national act?

Co-written musical works are commonly considered to be collective works (see eg Redwood Music Ltd v Feldman & Co Ltd [1979] RPC 385, 400-403). For instance, a song has typically two separate copyrights: one in the tune (as musical work) and one in the lyrics (as literary work). Other examples of collective works include books of essays by various authors or an encyclopaedia with articles each written by a different person.

Films are treated as works of joint authorship between the principal director and the producer, unless those are the same person. (CDPA ss 9(2)(ab), 10(1A)). The concept of joint authorship also covers broadcasts in cases where more than one person is taken as making the broadcast, i.e. those providing or taking responsibility for making available the contents of the programme and those making the arrangements necessary for its transmission (CDPA ss 10(2), 6(3)). There is no special definition of joint authorship for sound recordings and published editions.

Compilations are different from collective works and works of joint authorship; there is no statutory distinction made but case-law suggests that the compiler is the author, despite the fact that there may be various different works by other authors represented in the compilation (see eg A & B Black Ltd v Claude Stacey Ltd [1929] 1 Ch 177). Whereas s 3(1)(a) of CDPA 1988 specifically affords protection to tables and compilations (other than a database) as literary works, the scope of subject matter protected as a compilation has been limited when the CDPA was amended in implementation of the Database Directive. Prior to these amendments, a wide range of subject matter was protected as compilations, including football pools coupons, TV programme schedules, football fixture lists, trade catalogues, or street directories. With a broad definition of what constitutes a database having been adopted, most subject matter will be protected as databases.

5. Can a legal person be the original author of a work of copyright in your country? If so, does this affect the term of protection of such works?

"Author", in relation to a work, means the person who creates it (CDPA s 9). The statute does not specify whether the author of a work has to be a natural person or not. For “entrepreneurial” works (sound recordings, broadcasts, typographical arrangements of printed editions), copyright over the work produced may belong to a legal person.
Section 9(2) of the CDPA, for instance, stipulates that the first copyright in a sound recording is owned by the producer, the copyright in published editions belongs to the publisher.

6. Are other co-authors assigned to cinematographic or audiovisual works, other than the principle director in accordance with Article 2 of the Term Directive? What is the term of protection for such works in your national jurisdiction?

The authors of a film are its producer and principal director (CDPA s 9(2)(ab)) and the film is treated as a work of joint authorship, unless those two are the same person (CDPA s 10(1A)). Film copyright lasts for 70 years from the end of the calendar year in which the death occurs of the last to die of (a) the principal director, (b) the screenplay author, (c) the dialogue author, or (d) the composer of music specially created for and used in the film (CDPA s 13B(2)). If the identity of one or more of these persons is unknown but the identity of another is not, the relevant death date is that of the last whose identity is known (CDPA s 13B(3)). If the identity of all of these persons is unknown, the film copyright subsists as follows: (a) until the end of the 70 year period from the end of the calendar year in which the film was first made, or (b) if during that period the film is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first so made available (CDPA s 13B(4)).

7. Are official documents protected by copyright in your country? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Crown copyright in literary, dramatic, musical or artistic works lasts for 125 years from the year that the work was made. If the work is published commercially within 75 years from the year it was made, copyright lasts for 50 years from the date of public communication (CDPA 1988 ss 163(3), 164, 166(5)). Parliamentary copyright lasts for 50 years from the year in which the work was made (CDPA s 165(3)).

8. Has Article 3 of the Term Directive on the duration of related rights been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Article 191 of the CDPA 1988 stipulates that rights in performances last for 50 years from the end of the calendar year in which the performance takes place, or if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released.

For sound recordings, copyright expires—
(a) at the end of the period of 50 years from the end of the calendar year in which the recording is made, or
(b) if during that period the recording is published, 50 years from the end of the calendar year in which it is first published, or
(c) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, 50 years from the end of the calendar year in which it is first so made available, but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act (CDPA s 13A(2)).

For the term of protection of films, see question 6 supra.

9. Has Article 4 of the Term Directive on the protection of previously unpublished works been implemented in your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

Article 4 of the Term Directive has not been implemented in the UK.

10. Are critical and scientific publications of works which have come into the public domain protected under your national legislation? If so, what is the term of protection? Could you please cite the relevant provisions of your national act?

N/A

11. Are non-original photographs protected under your national legislation in addition to original ones? What is the term of protection for each of these types of photographs? Could you please cite the relevant provisions of your national act?

With the implementation of the Term Directive in the UK, it is only “original” photographs that are protected. However it is unclear if the concept of originality in this context is meant in the British sense, where the threshold of originality is lower (“skill, labour, judgement”), or in the European sense, where the photograph, to be original, needs to be the author’s own intellectual creation reflecting his or her personality.

Photographs are protected as artistic works and copyright lasts for 70 years post mortem autoris (CDPA s 12(2)).

12. What is the term of protection for original and unoriginal databases in your country? Please cite the relevant provisions of your national act.
Copyright in original databases subsists for the life of the author (or employee) plus 70 years (CDPA s 12). Regulation 17(1) of the Copyright and Rights in Databases Regulations 1997 provides that "database right in a database expires at the end of the period of fifteen years from the end of the calendar year in which the making of the database was completed". Regulation 17(3) provides further that "any substantial change to the contents of a database, including a substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment shall qualify the database resulting from that investment for its own term of protection". In effect, it is possible for databases that are updated regularly to obtain indefinite rolling protection from database right, i.e. every updated version of the database obtains 15 years protection.

13. Are any other categories of works given a different term of protection in your country (e.g. works of applied art) or are any additional related or sui generis rights in operation in your country which are subject to special rules as to the term of protection (e.g. in relation to computer-generated works, typographical arrangements, etc.)? If so, could you please cite the relevant provisions of your national act?

Copyright in the typographical arrangement of a published edition expires at the end of the period of 25 years from the end of the calendar year in which the edition was first published (CDPA s 15).

For computer-generated works, copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made (CDPA s 12(7)).

Copyright in artistic works used in designs of industrially produced articles lasts for 25 years from the year of the first legitimate marketing of these articles. Special provisions apply for crown and parliamentary copyright (see question 7 supra).

14. How has Article 7 of the Term Directive on protection vis-à-vis third countries been implemented in your national legislation? Could you please cite the relevant provisions of your national act? Had your country prior to the adoption of the Term Directive accepted any international obligations granting a longer term of protection to non-Community nationals than that foreseen by Article 7(1) and (2)?

Article 7 of the Term Directive has been implemented via section 15A of the Duration of Copyright and Rights in Performances Regulations 1995 (SI 1995/3297). Prior to the introduction of the Directive, British law afforded the same level of protection to works published in the UK to those published elsewhere (this did not only include the EEA).

15. Are moral rights in your country perpetual? Could you please cite the relevant provisions of your national act?

The moral rights of integrity, attribution (paternity) and the right to privacy of certain photographs and films last as long as the copyright subsists in the relevant work. The right to object to false attribution lasts for only 20 years after the author's death (CDPA s 86).

16. Please give the dates at which your national copyright act was changed so as to bring it into conformity with the Term Directive. Were any transitional provisions introduced? Were there any cases of previously expired rights being resuscitated? If so, for how long? Did your national act specify whose rights were being revived? Please cite the relevant provisions of your national act.

The Term Directive has been implemented in the UK via the Duration of Copyright and Rights in Performances Regulations 1995 (SI 1995/3297). The provisions came into force in January 1, 1996. Since the Term Directive required Member States to apply the new terms on 1 July 1995, the copyright in many works extended and copyright in some works that had previously expired had to be revived (see sections 17-19, 20-26, 30-35 of the Regulations, Sweeney v Macmillan Publishers Ltd [2002] RPC (35) 651).

17. In Romania the term of protection varies according to the class of the beneficiary to whom copyright or related rights pass after the death of the rightholder (surviving spouse/issue and other blood relatives/the State via escheat etc.)? Is a similar distinction introduced by your national legislation? If so, could you please cite the relevant provisions of your national act?

No such distinction is applicable in the UK.

18. In France an additional exception was introduced to the copyright act granting longer protection for works made during the First and Second World Wars (see Art. L123-8 and L123-9 of the French Code de la propriété intellectuelle). Are there any similar additional exceptions in your country? If so, could you please cite the relevant provisions of your national act?

N/A

19. Can you think of any instances where the term of protection provided by your national legislation was longer than that provided by the Term Directive, in a manner similar to that foreseen in Article 10 (1) of the Term Directive?
Directive? Was your national legislation then amended in accordance with the Term Directive in a way that affected works created before 1 July 1995 or not? Could you please cite the relevant provisions of your national act?

N/A

20. Does your national law provide for a Domaine Public Payant or an equivalent regime? If so, please briefly describe the main features and functioning of the system.

N/A

21. Can you think of any other noteworthy divergence of your national act involving the term of protection of works of copyright and related rights from the standards set out in the Term Directive? If so, please elaborate, preferably citing the relevant provisions of your national act.

The copyright for Sir JM Barrie’s work “Peter Pan”, was due to expire in 1987 in the UK, but an amendment to the 1988 Copyright Designs and Patents Act was passed to allow the copyright to run indefinitely in the UK. Any royalties are to be paid to the trustees of the Hospital for Sick Children, Great Ormond Street, London, for as long as the hospital exists (CDPA s 301).