

**§ 32:25 Nature—Transfer**

According to article 2(1) of the Copyright Act, copyright passes by succession and is transferable, in whole or in part, by assignment. Copyright also can be transferred to another party by means of bringing it into the business as capital, by marriage in community property, and due to a legal merger. Article 2(3) of the Copyright Act and the rules of general property law set three requirements for the assignment of copyrights, to wit:

1. Designated deed;
2. Valid title; and
3. Power of disposal.

The most important requirement for assignment is the deed. Pursuant to article 3:84(2) of the Civil Code, the deed must properly and specifically substantiate the work of which the copyrights are assigned. Furthermore, article 2(3) of the Copyright Act states that the assignment only contains those rights related to the work as stated in the deed or that necessarily follow from the nature and scope of the title. This rule is however not applicable when the creator is a fictive creator pursuant to article 7 or article 8 of the Copyright Act (article 2(5) of the Copyright Act). It is not possible to transfer copyrights with retrospective effect if the retrospective effect relates to a period before the date of the deed.<sup>1</sup> It is possible to transfer future copyrights pursuant to article 3:97 of the Civil Code if the future right is described in a sufficiently precise manner. A creator retains his moral rights after assignment (article 25(1) of the Copyright Act).<sup>2</sup>

The copyright owner can license (a part of) his copyright (article 2(2) of the Copyright Act). A license agreement is mainly governed by the general rules of contract law. In principle, license agreements do not have any prescribed form and also may be agreed orally. However, exclusive licenses granted on or after 1 July 2015 are only valid if they are granted by means of a deed (article 2(3) of the Copyright Act). This requirement came into force due to the Copyright Contract Act of 1 July 2015. The Act also has resulted in chapter Ia in the

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<sup>1</sup>Court of Appeal's Hertogenbosch, 13 May 1997, AMI 1998/61 (Pola/Happylight); preliminary relief judge of Court of Eastern Brabant, 13 July 2020, ECLI:NL:RBOBR:2020:3525 (HFG/ Maison du Monde), paragraph 4.16.

<sup>2</sup>Supreme Court, 3 April 2020, ECLI:NL:HR:2020:59, paragraph 3.2.

Copyright Act concerning exploitation contracts (article 25b-h of the Copyright Act).<sup>3</sup>

Exploitation contracts are those in which the main purpose is the granting—through, for example, transfer or license—by the actual creator<sup>4</sup> of rights of exploitation of his work to another party, such as a publisher or record company. Article 25b-h of the Copyright Act aims to protect the creator of the work by providing him the right to fair compensation for granting exploitation rights (article 25c of the Copyright Act). Pursuant to article 25d of the Copyright Act, the creator is, under certain circumstances, entitled to an additional fair compensation when the exploitation of the work has, due to its commercial success, resulted in an income disproportional to the compensation. Article 25f (1) and (2) of the Copyright Act provides protection to a creator against unfair contract terms. Almost all articles of chapter Ia of the Copyright Act are applicable to exploitation contracts concluded after 1 July 2015. There are some exceptions. The chapter is not applicable to works created based on a contract for services for the primary purpose of use of the created work by the client and agreements between the creator and end users.

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<sup>3</sup>This chapter also is influenced by the Digital Single Market Directive with the implementation thereof in 2021.

<sup>4</sup>Works of fictive creators, pursuant to articles 7 and 8 of the Copyright Act, are excluded from this title (*see* article 25 (3) Copyright Act).