

## Suggested Answers to the Questions in Chapter 3

1. **Is it a good idea that authors can assign—transfer—their economic rights in a copyright work to another party, e.g. a publisher or record company? Why might the negotiation over this be unbalanced (i.e. in the favour of the publisher or company)?**

The good answer will:

- Show knowledge of the theories that justify copyright protection – including economics and moral theories - and their relationship with copyright in practice. Note that the ability to license or assign copyright is one of the key rights that the author has – it is supposed to empower the author.
- Demonstrate engagement with the practical realities of licensing/assignment negotiations. Young artists may be in a position where they feel they have to accept the first offer they are made by a publisher or record company. They may have little or no leverage.
- Conclude by considering whether the long duration of copyright, which is meant to benefit authors, actually just ends up benefiting publishers, film studios and record companies (who have bought the rights from artists early on in their career).

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### 2. Is the duration of copyright in literary, artistic, dramatic and musical works at the appropriate length? What about for sound recordings?

The good answer will:

- Begin by explaining that only original works of copyright are protected by the law and that copyright is a time-limited right, lasting for 70 years after the death of the author in the case of the authorial works i.e. literary, dramatic, artistic and musical works. Once copyright expires, the work falls into the public domain.
- Focus on the many examples in copyright legislative history when copyright has been extended – including the 1990s US and EU extension of copyright in authorial works beyond the terms required by the Berne Convention (the term was increased from life of the author + 50 years to life + 70 years). For sound recordings, demonstrate knowledge of the 2011 Directive that extended the copyright in sound records from 50 years to 70 years from publication.
- Conclude by reflecting on the consequences of the extension of copyright – given that it prevents works falling into the public domain. How can this be justified? How does it work from the perspective of the incentive/reward theory? Is this a classic case of the ‘enclosure’ of the public domain and the ‘expansion’ of copyright?

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### 3. Consider the following examples:

- A producer and director make a film together without a formal agreement on copyright— who owns the copyright in the film?
- During the final recording session of a new pop song, a musician contributes a dramatic organ solo to the song, which was initially composed by another musician. The song goes on to be a hit. How can the authorship of the song and ownership of the copyright work be determined?
- A popular novelist completes his final novel just before dying. His (unmarried) lifelong partner owns the laptop featuring the completed novel, but due to the rules of inheritance, the copyright in the work passes automatically to the estate of the author, i.e. his closest living relatives—his father and brother. Should the laptop owner (his life partner) be compelled to hand over the intangible work contained within the tangible laptop to the copyright owners (the estate)?
- The duration of copyright in James Joyce’s works expired in 2012. Does this mean that the works are in the public domain? What does this mean for new creators who wish to adapt Joyce’s works?

The good answer will:

- For the first part, refer to CDPA, s.9(2), which states that the joint authors and first owners of copyright in a film are the producer and the principal director of the film. This reflects the reality of how films are made.
- For the second part, examine the relevant case law such as *Hadley*, *Beckingham* and *Fisher*— the key U.K. legal statement on joint authorship of musical works in the pop industry. In *Fisher* an organ player added a memorable intro/counterpoint part to an existing song (*A Whiter Shade of Pale*) and the finished arrangement – the hit version – was held to be joint work of authorship between the main composer and the organ-player because the organ player had contributed a ‘significant and original’ contribution. The originality standard of ‘intellectual creation’ is relevant here (*Infopaq*).
- For the third part, draw the analogy with the Larsson dispute over a rumoured fourth ‘*Girl with the Dragon Tattoo*’ novel. In that dispute it was alleged that the incomplete fourth novel was on a laptop owned by Larsson’s former life partner (they were unmarried). However, after he died, his copyrights passed to his estate i.e. his immediate family – his father and sibling. So if there had been a fourth novel, the copyright would have belonged to his estate, but the laptop, as a tangible object, would have remained the property of Larsson’s former partner. In the end it was established that there was no fourth novel in any workable sense. But the dispute illustrated a key point: copyright is a right over an intangible work. It does not mean that there is an automatic right to access a copy of that

work if it is held in hardware owned by someone else.

- For the fourth part, it should be noted that copyright in authorial works (literary, dramatic, musical and artistic) expires after 70 years post the life of the author. Once copyright has expired, as it has in the works of James Joyce, the works fall into the public domain. This benefits follow-on creators, who can make use of the underlying works without having to ask permission from the author and without the need to pay a licence fee. The myriad versions of Shakespeare, Ibsen and Chekhov plays that are performed each year exist in part because there are no rights restrictions or fees – these are public domain works and as such can be performed and reimagined in highly creative ways.