

BASIC NOTIONS ABOUT COPYRIGHT AND NEIGHBOURING RIGHTS

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1) What is the object of copyright protection?

Copyright protects literary and artistic works by offering a range of exclusive and non-exclusive rights to their authors. To be protected, a work has to be **more than a mere idea**. The distinction between protected works and ideas lies at the very heart of copyright law. The protection of a given work applies to the **expressions** of ideas that are contained therein. Accordingly, in order for copyright in a work to be infringed or violated, one has to copy the form in which the ideas are expressed. The mere use of ideas found in a work does not represent a copyright violation. For example, the author who has written an article on how to build a boat will be protected against the making and selling of copies of the article (i.e. the expression) without his or her consent. However, copyright protection cannot prevent anyone from using the instructions (i.e. the idea) contained within the article in order to build a boat, neither to write another article on the same subject, without copying the first one.

In order to illustrate what forms of expression may be protected, most copyright laws contain an elaborate, but usually not exhaustive, **list of examples**. The enumerated **categories** generally comprise articles, novels, poems, songs, plays, choreography, applied art and architecture, alongside more recent additions such as computer programs and, in certain countries, databases. Scientific theories, marketing concepts and algorithms could be given as examples of **unprotected ideas**.

Furthermore, to qualify for copyright protection an expression must have a sufficient degree of **originality**. Broadly speaking, a work is original when it reflects the **personality** of its creator. Yet, there are no universally agreed standards on how to assess originality. In any case, **novelty, artistic merit** or **purpose** of the work, are all **irrelevant** factors.

Legal traditions vary as to whether copyright takes effect from the moment of a work's creation or rather from its **fixation in tangible form**. In a country with a fixation requirement, i.e. a common law country, such as the USA or

the UK, a speech or a work of choreography, for example, is not protected under copyright until it is either recorded or transcribed. In countries adhering to the civil law tradition, such as France or Germany, copyright protects any type of works regardless of whether they have ever been recorded or transcribed.

2) What kind of protection does copyright grant?

Copyright reflects in most countries **two sets of interests** that are generally referred to as economic and moral rights.

The **economic rights** of the author enable him to earn a living from his work. Copyright therefore grants the author the exclusive right to authorize others to use his work under agreed terms and to take action against unauthorized uses. Economic rights are recognized by copyright laws worldwide and generally cover **all relevant commercial activities**, from the physical reproduction of books and the staging of plays and other forms of choreography, to the release of these works on the Internet.

On the other hand, authors typically have also a **non-pecuniary interest** in his work, notably to **decide** whether their works should be **made public** at all, to **claim authorship**, and to object to any use that can be considered as prejudicial to the **work's integrity**. These prerogatives are referred to as the author's '**moral rights**'. Moral rights constitute a characteristic of the civil law tradition. Other legal systems, particularly those of common law countries, may grant protection of such rights on a legal basis outside of copyright, for instance under tort, unfair competition and contract law.

3) How can copyright be obtained? Are there any formalities?

Nowadays, it is an almost universally accepted principle that the protection of authors' rights flows automatically from the act of creation and does not depend on **any formality**. In that respect, copyright differs considerably from other forms of intellectual property protection, such as patents, models or trademarks.

The lack of formalities as a condition for protection is enshrined in several **international conventions**; today, only a small number of countries are not signatory to at least one of these. The widely known © **symbol** dates from a period when many countries outside of Europe still adhered to a system of mandatory registration. Back in 1952, the © copyright notice was introduced by the UNESCO-administered Universal Copyright Convention in order to provide a simple prescribed form of copyright notice: this symbol, accompanied by the name of the copyright owner and the year of first publication, appearing on all copies of a copyrighted work, guarantees protection of the work in all UCC member countries, including those requiring compliance with formalities as a condition of protection.

Although mandatory registration has meanwhile been abolished almost everywhere, many national laws provide for a system of **voluntary registration** of works by the national copyright administration or similar body. Such registration can serve as valuable *prima facie* evidence in legal disputes.

4) Who owns copyright?

In principle, copyright is owned by the **physical person who created the work** (often referred to as "creator" or "author"). When several people actively participate in the creation, they become **joint authors**, which means that any decision relating to the exploitation of the work requires their joint consent.

Nevertheless, when the creator is an **employee** and has created the work in execution of his duties, many copyright laws, including both continental and common law traditions, provide that the employer, often a company, will at some point become the owner of the rights. In countries that do not adhere to this rule, the employer has to acquire the rights from the author in order to be able to exploit the work.

5) How does a copyright owner benefit from his rights?

Copyright vests in the owner the exclusive right to authorize uses of the work. In principle, everyone who wants to reproduce or publicly communicate a protected work has therefore to enter into a **contractual relation** with the author. To bring the work to the public, the author usually resorts to an intermediary, such as a publishing house, record company or broadcasting station.

First of all, the author has the possibility to grant **licences** on agreed terms, against a mutually agreed upon remuneration. In some countries, copyright laws allow also the author to **assign the entire copyright** to the intermediary against a lump sum and/or participation in the revenues from the exploitation of the work. Finally, in cases where the author is an employee and creates works as part of his job, copyright laws of certain countries provide that the **employer will own the copyright** from the outset. The actual creator will therefore not be entitled to a specific remuneration, apart from his salary.

6) When can a protected work be used without having to seek permission?

In order to find a fair balance between the public's interest in access to information and knowledge, on the one hand, and the exclusive position of rights owners, on the other, copyright protection is subject to a number of **exceptions and limitations**. In certain situations, a protected work may be used without the copyright owner's consent for the benefit of the society as a whole. The relevant provisions **vary from one country to another**: while some countries (mainly those adhering to the civil law tradition), have adopted a very restrictive set of limitations on copyright protection, others include in their legislation comparatively extensive provisions allowing acts to take place without the prior authorisation of the rights owner. The open-

ended 'fair use' concept in the USA and the more restrictive 'fair dealing' one in the UK, Canada or Australia are examples of the latter approach.

Some countries allow for **private use** of a copyrighted work without the permission of the author, such as the home taping of recorded music. Where this rule applies, right owners receive usually a compensation, which is based on a **levy** on blank supports and/or recording equipment and is distributed to authors through a collective management society.

7) How long is copyright protected for?

Recent international conventions provide for protection during the author's lifetime and a minimum of **50 years after his death**. Many countries, namely the United States of America and countries of the European Union, have introduced a term of **70 years *post mortem auctoris***.

Certain laws, especially those of the civil law tradition, do not have a time limit for moral rights, in which case one speaks of a '***droit moral perpétuel***'. After the author's death, the right to prevent derogatory use of his or her work will be exercised by either the **heirs** or a public **authority**.

A work that is no longer protected by copyright is said to have fallen into the **public domain**.

8) How does copyright function in the digital environment?

Copyright protection of **computer software** is today established in most countries and harmonized by international treaties. Moreover, recent legislation in many countries, backed by international law, has clarified that existing rights continue to apply when works are disseminated through **new technologies and communication systems** such as the Internet.

In order to ensure that right holders can effectively use technology to protect their rights and license their works in a digital environment, certain technological adjuncts to copyright law have emerged: many countries have introduced the so-called '**anti-circumvention**' provisions that aim at

prohibiting the circumvention of **technological measures**, introduced by right owners in order to prevent copying of the works (such as encryption), as well as alteration of electronic '**rights management information**', which identifies the work, its creators, performer or owner, and the terms and conditions of its use.

The current debate relates to the need to adapt the limitations and exceptions to copyright protection to new technologies, in an aim to maintain a fair balance between the interests of the rightholders and those of the public, without violating the obligations established by international law.

9) How does copyright affect everyday life?

Copyright grants the author the exclusive prerogative to reproduce and communicate his work to the public. It would be a mistake to think that this concerns only professional entities such as publishing houses and record companies. For example, the **copying of a page** from a textbook, the **duplication of a CD** or an **Internet download** may all constitute relevant reproductions under copyright law. Similarly, the music we hear in **publicly accessible places**, such as bars or shops, is normally communicated to the public under the terms of copyright.

Where **no exceptions or limitations** apply, every use of protected works requires the **consent of the copyright owner**. Legal consultation is therefore recommended in cases of doubt.

10) What are neighbouring rights or related rights? Are they different from copyright?

The term **neighbouring rights** (also often referred to as **related rights**) is usually understood to mean rights that protect the interests of **certain groups of right holders**, whose activities in most cases relate to the reproduction and dissemination of works, such as:

- **Performers;**
- **Producers of sound recordings;**
- **Broadcasting organizations.**

Protection under neighbouring rights is similar to copyright, although it is often more limited and of shorter duration. The labelling as 'neighbouring/related' indicates some degree of relationship between these rights and copyright, and at the same time distinguishes them from the latter.

11) How is a work protected internationally?

Copyright is a **genuinely national law**, in other words, each country is, in principle, free to determine the extent of protection it will apply within its own borders, unless it is bound by an international instrument. The **international agreements** that have come into existence since the 19th century provide a certain degree of harmonization of protection in all signatory countries. The **most important conventions** are:

- The Berne Convention for the Protection of Literary and Artistic Works of 1886 (last revised in 1971)
- The Universal Copyright Convention of 1952 (last revised in 1971)
- The International Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organisations of 1961 (often referred to as Rome Convention)
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement) of 1994
- The WIPO Copyright Treaty of 1996 (WCT)
- The WIPO Performances and Phonograms Treaty of 1996 (WPPT)

Today, **most countries** of the world adhere to at least one of these treaties. All of these instruments ensure that in every signatory state, foreign authors enjoy the same rights as national authors (according to the principles of '**national treatment**' and '**non-discrimination**'), and provide for **certain minimum standard** of protection regarding, among other things, scope and duration.

Since it is possible for national legislations to comply with international prescriptions in different ways, one has to consult the copyright law of the **respective country in which protection** is sought.

12) What can a right owner do when his rights are infringed?

The right owner whose moral or economic right have been infringed may take several steps: he can resort to the civil remedies provided for by the respective national law, in order to make the unlawful activity stop and to get compensated for the prejudice suffered: the court can make the infringer stop his illegal activities by means of an injunction. If the infringing activity has caused financial loss to the right owner, the court could also be asked to reward damages, including punitive or exemplary damages. Most countries provide also for penal remedies in some qualified cases of infringement, more particularly for large-scale piracy of protected works with a profit purpose.

13) How does copyright foster creativity?

Legal protection assures creators that others can approach and use their works without fear of unauthorized copying or piracy. Copyright and related rights provide therefore **incentives for creativity** in the form of recognition and economic rewards. This helps establish reliable conditions for **investment** in the area of creation and innovation to the benefit of society.

In contrast, **exceptions and limitations** to copyright protection can also encourage innovation by ensuring unprevented access to protected works in

specific cases for purposes such as education and news reporting. They thus facilitate the dissemination of knowledge and information, which, in turn, is an indispensable prerequisite of any new creation.

Exclusive rights, on the one hand, and fairly balanced exceptions/limitations, on the other, are therefore both designed to foster creativity. Their **interplay** is of vital importance for the creative development of any society.

14) What are cultural industries and what role does copyright play in them?

The term '**cultural industries**' applies to those industries which combine the creation, production and commercialisation of **content which is intangible and cultural in nature**. The notion of cultural industries includes, among others, printing, publishing and multimedia, audio-visual, phonographic and cinematographic productions, as well as crafts and design.

Designed to encourage and reward creative work, copyright and related rights constitute a **key ingredient** for the successful development of cultural industries. Increasing disrespect for exclusive rights, particularly in the form of rampant **piracy**, therefore poses a serious threat to a country's cultural and economic development.

15) How is copyright linked to cultural diversity?

'Cultural diversity is strengthened by the free flow of ideas, and that it is nurtured by constant exchanges and interaction between cultures' (Convention on the protection and promotion of the diversity of cultural expressions) Books, films, CDs and other products that embody copyright-protected works of the mind play a central role in this context since they are vehicles for ideas, traditions and values of the regional and national culture from which they originate.

The development of a sound **economic basis for creation in all countries and regions** is vital for preserving and enhancing of diversity. By rewarding

the labour of the mind, copyright and related rights play a **crucial part** in generating an environment that stimulates creativity and innovation.