



European
IP Helpdesk

FACT
SHEET

Copyright Essentials

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* This is an updated version of the fact sheet originally developed and first published in October 2017.

Introduction

Copyright is an intellectual property right (IPR) that grants authors, artists and other creators protection for their literary, artistic and scientific creations, generally referred to as “works”¹. Giving authors, artists and other creators incentives in the form of recognition and a potential fair economic reward allows them to concentrate on the creative part of their activity - literary and artistic creation. This, in turn, helps to increase access

to and enhance the enjoyment of culture, knowledge and entertainment the world over. No matter if you are a copyright owner or a copyright user, the understanding of the copyright basics is crucial to any business. In essence, it must be borne in mind that safeguarding your own copyright and securing the permission of third parties before using copyrighted materials is not only legally required but also a good business practice.

The present fact sheet illustrates the importance of copyright protection for businesses and provides insight into the copyright regime, knowledge of which could prove beneficial in particular to SMEs.

¹ In certain countries/languages copyright is referred to as “authors’ rights”.

1. Understanding copyright

Companies and individuals can be involved in the creation, recording, publication, dissemination, distribution or retailing of works protected by copyright and/or be users of those works. Some classic examples of copyrighted works include books, musical compositions or movies. But copyright can also protect a website, a brochure, a corporate video, newspapers, periodicals, printing, advertising, radio and television broadcasting, sound recording, musical and audio-visual works, motion pictures, computer software and databases.

For works to be protected by copyright

- ➔ they must exist in some form²
- ➔ they must be original³

Copyright law is not fully harmonised at the EU and international level, therefore the national laws of the country in which the author seeks protection apply.

At international level, minimum standards of protection⁴ have been established by the Berne Convention⁵, a treaty based on three basic principles:

- National treatment: works are given the same protection in each country as the country grants to the works of their nationals.
- Automatic protection: no formalities required.
- Independence of protection: works receive protection even if they cannot obtain such protection in their country of origin⁶.

The EU has adopted several legal instruments in the field of copyright⁷. However, unlike in other fields of IP law, each of the 28 Member States has its own copyright law and policy. Nevertheless, some form of harmonisation has been achieved through the different EU

2 Works protected by copyright can exist under many different forms such as writing, film, audio and digital recording. Sometimes national laws prescribe some material fixation. In other cases, the works do not need to be fixed, like for unrecorded speeches in France.

3 The author expresses his creativity by making free choices, resulting in a work that reflects his personality.

4 Types of works protected, rights granted and term of protection.

5 The Berne Convention is a treaty for the protection of literary and artistic works, signed by nearly 180 countries. Other relevant treaties and conventions include the WIPO treaties ([WCT](#) and [WPPT](#)); the [Rome Convention](#) and the Agreement on Trade-Related Aspects of Intellectual Property Rights ([TRIPS Agreement](#)).

6 If a work cannot be protected in its country of origin (e.g., due to a lack of originality according to stricter standards), the work is nevertheless protected in any other signatory country. If, however, a signatory country provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.

7 Such as the [Directive on copyright and related rights in the Digital Single Market](#), the [Software Directive](#), the Database Directive and the [Term Directive](#).

directives. For instance, the Directive on copyright and related rights in the Digital Single Market harmonises the rights of reproduction, distribution and communication to the public, and legal protection of anti-copying devices and rights management systems.

1.1. What does copyright protect?

There is no exhaustive list containing the works that can be protected by copyright. However, the following works are generally covered by copyright at international level:

- literary works such as novels, poems, plays, newspaper articles;
- computer programs/software, databases;
- films, musical compositions, and choreographies;
- artistic works such as paintings, drawings, photographs, and sculptures;
- architecture, maps, plans, technical drawings;
- sketches and three-dimensional works relative to geography, topography, architecture or science;
- advertisements, sometimes applied art;
- flyers, commercial material, slogans, brochures and user manuals.

Ideas, as such, cannot obtain copyright protection. It is the form of expression of those ideas that can be copyrighted.⁸

1.2. Copyright protection

Copyright protection is obtained automatically in the EU, as in any country which is a signatory to the Berne Convention. It arises from the moment the work is created and no registration or other formality is required⁹. However, it is a common practice to attach a copyright notice to the work with the purpose of informing others of the existence of copyright, reducing the likelihood of a potential infringement. Usually, this notice includes the mention “all rights reserved” or the symbol © together with the year in which the work has been created, e.g.: © European Union (2021), © 2021 Copyright holder. All rights reserved.

⁸ Provided that the form of expression is an original creation by the author.

⁹ Several countries allow for the voluntary national registration/deposit of works protected by copyright. This differs from one country to another, including systems where the work is actually deposited (registration) and others where only declarations are submitted (recordation). Therefore, registration of copyright is not constitutive of the right, but can prove beneficial in some situations, saving time and money in the case of a dispute. For example, in the Benelux, the existence of an idea, concept, prototype etc., can be voluntarily recorded using [i-DEPOT](#) in order to prove the existence of a creation at a precise moment in time, similar initiatives exist in other countries such as France with the [Enveloppe Soleau](#). For more information on how a particular country manages copyright registration and deposit systems, read the WIPO survey on the topic, its summaries, tables and charts, available [here](#).

Types of rights granted

The copyright system allows authors to benefit commercially from their work, through:

- **Economic rights:** These enable right holders to derive financial reward from the use of their works by others. Generally, they take the form of exclusive rights¹⁰ and are harmonised at EU level. They include the right to reproduce and publish the work.

Some examples of economic rights

- right of reproduction, e.g., to make copies of the work such as printed publications or sound recordings
 - right of distribution, e.g., to distribute copies of the work
 - right of fixation, e.g., to record the work in, for example, a CD or DVD
 - right of communication to the public, e.g., broadcasting via radio, TV or Internet
 - right to perform the work publicly, e.g., to authorise live performances of the work such as in a play
 - right to make “derivative works”, e.g., to authorise modifications, translations, adaptations such as turning a novel into a screenplay, or other new uses of a work.
- **Moral rights:** These enable right holders to claim authorship¹¹ and prevent mutilation/ deformation of their work that may be detrimental to their honour or reputation¹². They are usually non-transferable¹³ and are not fully harmonised, so their scope of protection may vary from one country to another.

Term of protection

While in many countries moral rights have no time limit¹⁴ (they last forever), economic rights are usually limited in time. The minimum duration of protection set by the Berne Convention is the author’s lifetime plus 50 years from his death. However, within the EU the protection is prolonged to 70 years after the author has passed away. In the case of a work of joint authorship, the 70 years term of protection is calculated from the death of the last surviving author.

10 Subject to certain allowed reservations, limitations or exceptions provided by Directive on copyright and related rights in the Digital Single Market.

11 The right to claim authorship is sometimes called the right of paternity or the right of attribution.

12 Also known as the right of integrity.

13 Moral rights usually remain with the authors even after the transfer of all their economic rights. In the EU that is usually the case but exceptions exist such as in Luxembourg where the author can expressly transfer/assign his moral rights (provided his honour or reputation are not undermined) or in the UK.

14 Within the EU, the possibility to provide for a different term of protection of moral rights is left to the Member States.

Within the EU, some particular rules are applied to:

- **Anonymous or pseudonymous works**, where the term of protection expires 70 years after the work has been lawfully made available to the public.
- **Audio visual (cinematographic) works**, where the term of protection is 70 years after the death of the last of the following: 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 or audio-visual work¹⁵.
- **Photographic works**, where, in certain EU Member States, if a photograph does not meet the threshold of originality, it is considered a „simple photograph“ and it usually enjoys a shorter copyright protection¹⁶.

1.3. Neighbouring or related rights

Neighbouring rights, also known as related rights, are the rights which, although related to copyright, have a specific subject matter and protect the interests of certain right holders other than the work's author, such as performers, producers (e.g. of films), broadcasting organisations and publishers. These rights are regulated at international level by the Rome Convention¹⁷.

15 This applies regardless of the provisions of national law regarding the authorship of the film, ensuring a common duration of copyright between EU Member States. The principal director is always considered as the author, or one of the authors, of the cinematographic or audio-visual work, although national legislations may provide for other co-authors.

16 For example, in Germany, Austria or Denmark copyright protection of "simple photographs" lasts 50 years. In Italy, for instance, the law lists exactly which kind of photographs are "simple photographs" and grants them 20 years of protection while in Spain the protection lasts 25 years.

17 The Rome Convention establishes a term of protection of 20 years from the end of the year in which (i) the fixation was made (for phonograms and performances incorporated in them), (ii) the performance took place, (iii) the broadcast took place. However, national laws usually provide for a longer term of protection (e.g. 50-year term for phonograms and performances in the EU).

1.4. Copyright and other IPRs

	Pros	Cons
Copyright	<ul style="list-style-type: none"> • Automatic protection • No registration costs • Moral rights can be perpetual • Long-term protection for economic rights • Software and databases can also be protected by copyright 	<ul style="list-style-type: none"> • Requirement to qualify as a work • No priority • 20 years protection for neighbouring/ related rights¹⁸ • There may be some extra requirements for designs to be copyrighted in some countries¹⁹
Patents	<ul style="list-style-type: none"> • Exclusive rights • 12 months priority • Stronger protection 	<ul style="list-style-type: none"> • Costly and lengthy procedures • 20 years protection • Disclosure requirement • Extra requirement for software to receive European patent protection²⁰
Industrial designs	<ul style="list-style-type: none"> • 3 years protection for unregistered designs • 6 months priority • Harmonisation at EU level • Some harmonisation at international level²¹ 	<ul style="list-style-type: none"> • Maximum non-renewable 25 years protection for registered Community designs²² • No renewable protection for unregistered Community designs
Databases²³	<ul style="list-style-type: none"> • Exclusive rights • Secure protection 	<ul style="list-style-type: none"> • No priority • EU right only • 15 years protection²⁴
Trade marks	<ul style="list-style-type: none"> • Renewable indefinitely for periods of 10 years • 6 months priority • Harmonisation at EU level • Some harmonisation at international level²⁵ 	<ul style="list-style-type: none"> • Obligation to use²⁶

18 From the end of the year in which the fixation was made or the performance / broadcast took place. Note that in the EU, for phonograms and performances, the duration of protection extends to 50 years.

19 For instance in Spain and Italy, in order to qualify for copyright protection, the designs must show creative character and artistic value.

20 In Europe a software-related invention has to be considered as a computer-implemented invention (the software has to solve a technical problem) in order to qualify for patent protection. Check the dedicated EPO websites [here](#).

21 Check our IPR Charts on [Community Design](#) and [International Design](#).

22 Registered Community Designs (RCD) are renewable every 5 years up to a maximum of 25 years.

23 [A sui generis EU right](#) granted to the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilisation of the whole or a substantial part of its contents. Nevertheless, databases, which, by reason of the selection or arrangement of their contents, constitute the author's own intellectual creation shall be protected as such by copyright.

24 From the end of the year in which the making of the database was first made available to the public.

25 Check our IPR Charts on [EU Trade Mark](#) and [International Trade Mark](#).

26 An EU trade mark has to be put to genuine use in the EU in connection with the goods or services for which it is registered within a period of five years following registration.

1.5. Works in the public domain

Once copyright protection expires, the work becomes available for use without permission from the copyright owner; in other words, the work enters into the so-called public domain. Moreover, someone willing to use a copyright-free work – that is a work in the public domain – will find it advantageous to find no third parties' rights as obstacles and to be able to proceed to commercialisation, as there should be no time-consuming negotiations or paperwork involved.

The picture below is a faithful photographic reproduction of a two-dimensional painting (taken from Wikimedia Commons, here). Please note that even though the painting is in the public domain, its photographic reproduction may be under copyright or neighbouring rights' protection in some jurisdictions, as explained above under "term of protection".



To figure out whether a work is in the public domain and therefore whether it can be used without infringing copyright, the following should be kept in mind²⁷:

- Who created the work and whether and when the creator passed away.
- National copyright laws also apply to public domain works.
- A reproduction/recording of a work in the public domain often qualifies for separate copyright.
- Any adaptation of a publicly available work is protected by copyright but the original version can be used freely.

Particular care should be taken when dealing with films, music and photographic reproductions of works of art. One also needs to be aware of other types of rights that might affect whether and how works in the public domain can be used.

Musical compositions and sound recordings are two different types of works. For example, despite the right to use a Mozart (1756-1791) or Beethoven (1770–1827) composition freely (public domain), to play a sound recording of such composition requires that either the recording is free to use or that you acquire a right to use it.

²⁷ For further information, please check "Public Domain", Ronan Deazley and Bartolomeo Meletti, available here.

2. Copyright and SMEs

Most companies have aspects of their work protected by copyright and are copyright authors or owners. A company is, however, a copyright user if it uses copyrighted materials. The use of copyrighted materials may also be a company's daily activity, as it is for radio stations, publishing houses, libraries, or shops, or an occasional tool to enhance market presence and develop business operations. On the other hand, when a company's activity comprises the creation of corporate publications, brochures, marketing activities, etc., or when it participates in the so-called creative industries, the company is a copyright owner. Sometimes, however, the author of a work does not own copyright, as in the case of joint works, collective works, and works done for an employer. Depending on the type of work, the following applies:

Joint works	Collective works	Works for employer
<ul style="list-style-type: none"> • “Joint ownership” takes place when two or more people are inextricably linked to the creation of a work. • It occurs when the contribution to the work from each party • In such cases, authors own the work jointly and equally, unless otherwise agreed. • An example: a book with two or more authors if the contribution of either one of the authors is not separately identifiable or, though identifiable, cannot be used as a separate work. 	<ul style="list-style-type: none"> • A “collective work” is one which puts together the separate works of different authors. • An example: a magazine or encyclopaedia with a series of articles written by independent authors. • Unless otherwise agreed, the rights in the magazine as a whole would rest with the publisher but the authors of each article would own copyright in their respective contribution, as they can be separately identified and are works capable of separate use. 	<ul style="list-style-type: none"> • In many EU countries, a copyright to a work created by an employee in the course of employment is owned by the employer, unless otherwise agreed between the parties. • For example, where a graphic designer employed by a publishing company asked to create a poster, the employer will own the copyright in the poster by default, unless otherwise agreed. • However, when a work is created by a freelancer under a service agreement, the author retains copyright in the work.

2.1. Licensing

It is a general rule that every commercial use or exploitation of third party copyrighted works requires a licence or an assignment of rights from the rights owner. At the same time, granting a licence can help copyright owners benefit financially from their works.

A copyright licence is an official permission given by a copyright holder (the licensor) to the user of its copyrighted work (the licensee), usually by means of an agreement, allowing the licensee to use the copyrighted work. A licence may be set on an exclusive or non-exclusive basis. It can be limited to a certain geographical territory, to a specific period of time, require that the rights are only exercised in a specific manner or through certain media, allow a certain use of the work, etc.²⁸.

Copyright licences

Exclusive licence: this licence excludes any other potential licensees in the scope of exclusivity. The licensor cannot use the intellectual property.

Sole licence: exclusive licence, but the licensor generally retains the right to use the intellectual property.

Non-exclusive licence: a licence that can be granted to as many licensees as the licensor wishes.

2.2. Assignment

In most EU countries (except, for example, Germany and Austria), a sale/transfer of copyright ownership from a copyright owner to a third party is allowed. It can be done by means of an assignment agreement. An assignment agreement is a contract by means of which the copyright holder (the assignor) transfers its copyright in a given work to the assignee, who becomes the new owner.

A copyright assignment may take place, for instance, when an author chooses to transfer copyright ownership to a publisher, who then will distribute the work to broader audiences and pay a monetary remuneration to the author in exchange, usually in the form of royalties. Assignment agreements usually entail a full transfer of the rights concerned. Therefore, if the assigning party wants to do anything with the work after concluding the assignment, such as making it available on a website, a permission from the assignee will be necessary. Assignment of copyright is generally permanent, unless the agreement indicates otherwise.

²⁸ For further information about licensing, see the European IPR Helpdesk fact sheet "Commercialising Intellectual Property: Licence Agreements", available [here](#). If you require first-line assistance, you can also contact our Helpline.

2.3. Use of works available on the Internet

The use of works available on the Internet usually requires prior authorisation of the copyright owner. That applies to pictures, marketing videos, clips, articles published in newspapers, corporate brochures, website design, etc. The mere fact that a work is available digitally does not mean copyright law does not protect it.

Quite to the contrary, when it comes to benefiting from copyright protection, the manner of fixation is irrelevant and often fixation is not even required at all²⁹. Downloading content from any website is, in fact, making a copy of that content, which can be compared to making copies of a book in a library. Such action may therefore constitute a copyright infringement. For that reason, use of works available on the Internet should only take place after obtaining permission from the rights holder. Moreover, while many companies believe that linking to content instead of copying it is unlikely to make them liable for copyright infringement, in certain instances posting a link redirecting to a website containing illegal content might constitute a copyright infringement.

²⁹ As national legislation might vary from one country to another, to fully benefit from copyright protection it is recommended to find out about the applicable national copyright legislation regarding the fixation requirement.

3. Copyright infringement

The use of a work or a part of it by a third party without the copyright owner's permission is a copyright infringement. In such cases, copyright owners can take legal action and seek remedies in court.

3.1. Remedies

When it comes to solving copyright infringement disputes, it is a standard procedure to start with sending a cease-and-desist letter prior to resorting to the judicial system. A cease-and-desist letter is a notification stating the allegations of infringement and demanding that such infringement stops. It can contain additional conditions such as a demand for payment or a request to sign a licence agreement.

If such a letter fails to achieve its purpose, alternative methods of solving disputes such as mediation or arbitration are available.

In the case of a failure to reach an amicable solution to a probable copyright infringement, the right holder can also ask a court to issue an injunction, which is an order to prohibit the infringer from using the copyrighted work. Injunction proceedings are usually swift, flexible and cost efficient and can be granted within days, or even hours. Right holders whose rights have been infringed can also seek damages, for example in a form of a pecuniary payment, for any loss they may have incurred as a result of the infringement. The purpose of damages is, therefore, to restore right holders to the position that they would have been in if the infringement had not occurred.

The remedies against copyright infringement are regulated by the Enforcement Directive³⁰, its provisions having been implemented into the national laws of the Member States.

³⁰ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, available [here](#).

3.2. Copyright exceptions

In order to provide some balance and protect free expression, copyright law is construed in a way to allow for everyday uses of copyrighted works needed by users and creators. Those uses are known as “copyright exceptions”³¹.

As follows, the EU Member States are allowed to provide for the following copyright exceptions, inter alia:

- photocopying/photo-reproduction
- private copying
- reproductions by libraries, archives and museums
- ephemeral recordings made by broadcasters
- reproduction and extraction of works for the purpose of text and data mining
- reproduction of broadcasts by social institutions
- illustration for teaching or scientific research
- reporting by the press on current events
- short extracts or hyperlinking of online press publications
- quotation for criticism or review
- use for public security purposes
- use of public speeches and public lectures
- use of works of architecture or sculptures in public spaces
- use for advertising the exhibition or sale of works of art
- use for the purpose of caricature, parody or pastiche
- use for the purpose of research or private study
- use of works in digital cross-border teaching activities
- use of works for the preservation of cultural heritage including out of commerce works

The European Commission recently consolidated its efforts for a proper functioning of copyright protection in the Digital Single market, by introducing multiple exceptions to copyright protection such as the reproduction and extraction of works for the purpose of data mining, allowing universities and research institutions to reproduce and extract protected works for scientific purposes without the need of a licence.

However, national copyright laws may differ from one another in relation to copyright infringement exceptions in each country. The European Commission has presented legislative proposals to harmonise copyright law to facilitate the licensing of European audio-visual works and the digitisation and availability of out-of- commerce works³².

31 Copyright exceptions are contained in the Berne Convention and, for the most part, they are not made mandatory. Instead, they are left for the Member States to determine what exceptions they want to implement into their national legislation. Moreover, the new Directive on copyright and related rights in the Digital Single Market includes additional exceptions.

32 Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market, available [here](#).

4. Conclusions

Copyright protects creators or owners of original literary, scientific and artistic works and is relevant to almost all businesses. Adequate copyright protection is an essential part of a company's business strategy.

To avoid any unnecessary risk the following steps should be taken:

- First, the copyright associated with the business should be identified.
- Ownership of the copyright necessary for the business should be ascertained in order to determine whether permission to use it needs to be requested.
- A copyright management strategy suitable for the business must be defined. For instance, it is strongly recommended to review employee and commissioned work contracts to ensure that copyright ownership clauses are clear.
- A copyright infringement strategy must be developed, including a plan on potential infringement monitoring and the recording of the development process of copyright material³³. Taking out IP insurance may prove beneficial in order to cover the costs of potential legal proceedings.
- Company staff must be trained on copyright issues and their responsibilities when using third parties' copyright works.

These measures should help businesses avoid potential copyright disputes. If an infringement takes place, it is advisable to:

- Try to find an amicable settlement before entering into any long and costly legal proceedings.

All things considered, copyright is an attractive way to protect intellectual assets, which can help preserve and foster the success of a business. Although the majority of EU Member States have similar copyright laws, nuances and differences exist between the national copyright laws and before taking any step regarding copyright - either as a right holder or as a user - it is recommended to both check the applicable national laws³⁴ and seek professional advice³⁵.

33 That includes keeping records of the identity of authors, their creative contributions and working drafts, publication dates, assignment and licence documents. They may ultimately be required as evidence.

34 EUIPO's dedicated webpage on "[FAQs on Copyright](#)" provides useful information on different legislations of EU Member States.

35 Have a look at our guide "10 steps to find a suitable IP professional" [here](#).

Useful Resources

For further information, please also see:

- Fact sheet “[IP Enforcement Asserting Your Rights](#)”
- Fact sheet “[New Directive on Copyright and Related Rights in the Digital Single Market](#)”
- Fact sheet “[Commercialising Intellectual Property: Licence Agreements](#)”
- Fact sheet “[Non-Disclosure Agreement: a Business Tool](#)”

Our main goal is to support cross-border SME and research activities to manage, disseminate and valorise technologies and other IP rights and assets at an EU level. The European IP Helpdesk enables IP capacity building along the full scale of IP practices: from awareness to strategic use and successful exploitation.

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AMBASSADORS

Our regional ambassadors provide IP support throughout Europe



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