

Introduction to Copyright Law - Summary -

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Intellectual Property

- Main types of intellectual property:
 - Patent (inventions, eg. Light bulb)
 - Design Patent
 - Trade Mark (Names of products, e.g. Coca Cola)
 - Copyright (creative work, e.g. Paintings, novels,...)

Copyright

- An idea itself is not protected under copyright – it needs to be fixed in a material form
- Creative works are automatically protected under copyright
 - Trade Marks and Patents need to be registered
- Absolute Right

Two systems of copyright

Author's Right	Copyright (traditional)
From continental Europe (Germany, France)	From England, USA
No formalities for protection	Traditionally: Formal registration needed Today: No registration needed
“Person's Intellectual Creation”	“Original Work” (No creativity needed)
Focus: The author – moral rights are important and more protected	Focus: The work – economic aspects are important and more protected

Why are creative works protected?

- Justification for granting copyrights
- Public interest
 - Public wants to consume and promote culture
 - Public wants to learn about arts and encourage artistic education
- Interest of the author
 - Author wants a reward for his/her creativity
 - Author needs an incentive for creativity

Legal texts about copyright

- Universal Copyright Convention
 - Signed in 101 countries (not in Estonia), low level of protection
- Berne Convention
 - (http://www.wipo.int/export/sites/www/treaties/en/ip/berne/pdf/trtdocs_wo001.pdf)
 - Signed in 166 countries (also in Estonia)
 - protection of literary and artistic works
- Rome Convention
 - Signed in 89 countries (also in Estonia)
 - Protection of Performers and Broadcasters
- Different National Acts, but no common European Copyright

What is protected?

Protected Works

- A protected work is a person's intellectual creation, which is fixed in a material form (only the idea itself is not protected)
- Literary Works: books, speeches, lectures, articles, etc.
 - Must contain creativity and own thoughts/opinions/statements
- Artistic Works: paintings, drawings, photos, illustrations, sculptures, etc.
 - Must contain individual input that can be associated with only the artist, should not be too simple, should express a statement
- Musical Works: songs, melodies, compositions, themes, etc.
 - Must be fixed (recorded, written, filmed...), should not be too simple (single tones cannot be protected)

Who is protected?

Protected Authors

- Nationality
 - If the author is from a member state of the Rome/Berne Convention, his/her works are automatically protected
 - Publishing country
 - If the work is published in a member state of the Rome/Berne Convention
- a work created, for example, in Estonia is automatically protected in other member states of the Berne convention and cannot be copied, for example, in Germany

What rights does the author have?

Economic Rights = Author's Rights

- Reproduction
 - Author may copy or duplicate his/her own works
- Adaption
 - Author may transform his/her work into another type of presentation (e.g. Turn his book into a screen play and then into a movie)
 - Author may translate his/her work (Art. 8 BerneC)
- Distribution
 - Author can control where and how many copies of his/her work are sold
- Broadcasting
 - Author may publically show his/her works (e.g. Perform on stage, upload to the internet, show in TV, display in a museum)

Author's Rights

Moral Rights

- Claim of Authorship
 - It needs to be visible whose creative input has been used
 - E.g. Credits at the end of a movie
- Author can object modifications of his/her work
 - Examples:
 - Author can object to the change of location of his sculpture
 - Composer can object, if his music is used in an immoral film
- Moral Rights cannot be sold or transferred
- Destruction of a work is no violation of Moral Rights (in Germany) – in France, for example, the permission of the author needs to be asked before destroying his work

Author's Rights

Licensing

- Author can sell Economic Rights (give specific licenses to allow usage of his/her work)
- For every single economic right is one license needed
- A license can be restricted
 - Territory (a movie can be shown only in a certain country)
 - Time (a painting can be displayed only for a certain timeframe)
- Example:
 - Author writes a novel.
 - Sells the right of reproduction and broadcasting to a publishing company.
 - The company is not allowed to adopt the novel.
 - The license for adopting (e.g. Making a movie out of the novel) can be sold to another company.

Author's Rights

Moral Rights

- If a work is modified to a parody it does not necessarily mean that copyright was violated
 - A parody is making a statement (moral rights violation versus freedom of speech)
 - Therefore a parody can be justified by the human right “Freedom of speech”
- The popularity of an artist does not influence copyrights
 - Even if a known artist draws something too simple it would not be protected under copyright)

Violation of Economic Rights

- Violation of Economic Rights occurs when a license has not been purchased
 - Reproduction
 - Copying or downloading music
 - Copying in a library is allowed because the library has paid for a license by purchasing a copy machine (certain amount of the copy machine's price goes to the Authors' Society)
 - Adaption
 - Distribution
 - Broadcasting
 - No violation: playing a song at home
 - Violation: playing a song in public for an audience

Violation of Economic Rights

- Internet Issues
- Peer-to-peer file sharing
 - Upload = violation of Broadcasting right
 - Download = violation of Reproduction right
- Streaming
 - Upload = violation of Broadcasting right
 - Watching = violation of Reproduction right (Court: The user has theoretically the possibility to record the movie. Therefore it is a violation of the Copyright.)

Free Uses

In certain cases is the usage of Intellectual Property not violating copyright:

- Quotations (Art. 10 (1) BerneC)
 - Parts of another person's work may be used in order to illustrate or prove a statement (must be recognisable as a quotation).
 - Parts of works, which are not individual.
- Education (Art. 10 (2) BerneC)
 - School Books, Teaching Materials
- News Reporting (Art 10^{bis} BerneC)
 - Public interest on current events
 - E.g. News about a sold painting may show a picture of the painting

Free Uses

National copyright acts regulate other free uses:

- Germany:
 - Pictures of buildings (architectural works) – may be reproduced on postcards
 - TVs and audio players in electronic stores – may play clips or music to show quality features
 - Reproduction for own private use is allowed – may make a copy of a CD for yourself

Free Uses

Examples:

- Case “Song Text” (German High Court 1987)
 - A popular singer died. The city of Berlin set up a memorial tablet. A newspaper made a story about this event. The article includes a picture of the tablet and the complete text of the singer’s most popular song.
 - Showing the picture in the news is no violation → News reporting
 - Printing the complete song text is a violation of reproduction
→ quotation does not prove a statement and is not part of the actual event
- Google Street View
 - May display architectural works because they are part of the environment and everybody could take a picture of them

Law Enforcement

If copyright was violated there are several punishments possible:

- Destruction and Prohibition of Use
- Compensation (Civil Law)
 - Author's actual loss based on the violation needs to be paid back to the author
 - Figurative license – violator needs to pay a figurative amount
 - Account of profits – violator needs to pay back the profits he has made by selling, for example, illegal copies
- Penalty Law
 - Unauthorized copies or broadcasting can lead to up to 3 years prison sentence
 - Industrial violation of copyright can lead to up to 5 years prison sentence

Law Enforcement

- Only a few provisions in the Berne Convention:
- Art. 13 (3), 16 → Confiscation of imported copies
 - Unauthorized imports and copies can be confiscated
- Art. 15 (1) → Presumption of authorship
 - It is difficult to prove, who the real author is – author needs to prove it himself (Germany)
 - If a name is on the work it counts as proof of authorship

Term of Protection

- After Art. 7 (1) Berne Convention a work is protected for 50 years after the author's death
- There are different national acts:
 - Germany and Estonia: 70 years after the author's death

Collecting Societies

- Collecting Societies are helping authors to enforce their copyrights:
- Example:
 - A musician sells his economic rights to the collection society. The society can sell the broadcasting licenses to radio stations or discos. The musician gets licensing money from the collection society.
 - A painter sells his painting to a gallery and becomes a member of the painters' collection society. Every time his painting is sold, the society collects a certain percentage (typically 1%) from the gallery's earnings and gives them to the painter.

Related Rights

- Persons, who present creative work to the public have own rights. They receive no creative gratification, but only Commercial Gratification.
- Broadcasters (Art. 13, Rome Convention)
 - Re-broadcasting is prohibited
- Film Producers
 - Producers have high risks with film productions
 - Therefore they own an economic right on the whole film (no international treaty, though)
- Publishers
 - No international treaties, only some national acts

Summary

- Copyright = Intellectual Property
- Protected works = intellectual property + fixed in material form
- Economic and Moral Rights
- Licensing
 - License for every or single economic rights can be transferred
 - Moral rights cannot be licensed/transferred
- Related Rights
 - Commercial benefits