



Frequently Asked Questions on Copyright and Related Rights



1. What is copyright?

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings.

2. Is there a worldwide Copyright Law?

No. Copyright is territorial. Each country has a copyright law which is adhered to in that country.

3. Which categories of works are protected by copyright?

These include the following:

- Literary works such as books; journals; manuals; computer programs; speeches; poems, novels,
- Musical works, such as lyrics, musical notations,
- Dramatic works such as scripts, plays,
- Artistic works like paintings, sculptures, cartoons,
- Audio-visual works such as films, and
- Applied art works such as jewelry.

Most of the ARIPO Member States have the same categories of works to be protected in their Copyright Laws.

4. What rights are granted by copyright?

The rights granted are economic and moral rights.

- **Economic rights** enable the rights holder to benefit economically from their original works by granting them the sole right to, sell, distribute, broadcast, translate, produce or reproduce (making copies) any substantial part of the work in any form. It also includes to perform the work in public, broadcast, communicate to the public or if the work

is unpublished, to publish the work or any substantial part of it.

- **Moral rights** are the right to be identified as the author also known as paternity right and the right to object to any mutilation or distortion of the work also known as right of integrity.

5. What does copyright protect?

Copyright protects original expression of ideas in a tangible form and the rights of copyright owners to allow or prohibit the use of their works. Protection is automatic as soon as a work is fixed in a medium then it is protected by law.

6. What does copyright not protect?

Copyright does not protect ideas, facts, laws, methods of operation, concepts, principles, or discoveries.

7. What are related rights (neighboring rights)?

These are rights of performers, producers of sound recordings and broadcasting organizations. They are secondary rights that are accrued from the copyrighted work and cannot exist on their own, for example, producers of phonograms (sound recordings). They are also known as entrepreneurial rights as they are rights given to the person/s or legal entities who contribute to producing or making of the copyrighted work.

8. What is the duration of copyright?

According to the Berne Convention for the Protection of Literary and Artistic Works (1886-1979), economic rights in copyright are normally protected throughout the life of the author/creator and 50 years after the death of the author of the work. In some countries such as Ghana, Sao Tome and Principe and the United States of America protection is for the

entire life of the author and 70 years after death.

However, moral rights usually exist forever and may be transmitted by testamentary disposition or by operation of the law following the death of the author.

9. What is the duration of related rights?

Under the WIPO Performances and Phonograms Treaty (WPPT) 1996, the term of protection for performers shall last, at least, until 50 years from the end of the year in which the performance was fixed in a phonogram.

The term of protection for producers of phonograms under Article 17 of WPPT shall last, at least, until the end of a period of 50 years from the end of the year in which the phonogram was published or failing such publication within 50 years from fixation of the phonogram.

An exception is Ghana's Copyright Act Section 29 Act 690 of 2005 which provides seventy (70) years for the protection of Performers rights.

10. Do related rights diminish copyright protection?

Related rights do not diminish or undermine copyright protection that exists in a work performed, recorded, or broadcasted.

11. Can copyright be transferred to someone else?

Yes. Copyright can be transferred as it is a property of the right holder. Transfer is normally in writing. It can be transferred, wholly or in part, bought or sold, inherited, transferred through operation of the law and licensed. Some or all the rights may subsequently belong to someone other than the first owner and may be jointly owned by the ones it has been transferred to (transferee).

Most ARIPO Member States Copyright Laws provide for transfer of economic rights in writing. Exceptions exist for moral rights which normally continue to exist with original author even after the transfer of economic rights.

12. Can moral rights be transferred?

It depends on the laws of each jurisdiction but the right to be recognized as an author remains even after the economic rights lapse, an author will still be the author of a work and the author can object to any use of the work that will water-down his integrity though he has sold all economic rights of that work. Moral rights must be respected by anyone who has been licensed to exploit the economic rights. The licensee should not use the work in prejudice of the paternity and integrity of the right holder.

In a testamentary disposition, normally in writing, the author can state to whom the moral rights should be given after their death, also by operation of the law. In some jurisdictions, like the United Kingdom and Botswana one can waive the moral rights in writing.

13. Do I own copyright if I own a copyright work?

If you are a creator/ author (first owner) then you will own copyright unless there is any contractual agreement to the contrary. You may also own copyright if the copyright was transferred to you. For example, if you bought a book, you own the copy of the book, but you do not own the copyright of that book unless it was transferred to you. Permission is needed from the right holder to allow you to exploit it.

14. Who owns copyright?

The author of the work is the first copyright owner. If the work is made by an employee in the course of employment, then the employer who is not the author is the first owner of

copyright, unless there is an agreement to the contrary between the employer and the employee. If one of the joint authors is not an employee of the same employer, then copyright in that joint work would be jointly owned by the employer and the joint author. In the case of commissioned work, the author is not the copyright owner unless there is an agreement to the contrary.

15. Who owns copyright in a collection?

The person or organization who organized the carrying out of the collective work own the copyright to the extent of his/their creativity of the complete work. Where the finished work includes distinct and separate works by different authors, each contributing author owns only the copyright in their own work included in the 'collection'. In a collection of poetry whereby each poem is written by a different person (author) then each will own copyright in respect to their poem. You will only own copyright to the extent of the creative work that you have authored and included in the collection.

16. What is joint authorship?

Where two or more people have created a work protected by copyright these people are joint authors. In commercializing the work, you need consent from the joint authors unless there is an agreement to the contrary. The duration of protection for joint authorship works is life of the authors plus 50 or 70 years (depending on the jurisdiction/country law) after the death of the last surviving author.

17. What is public domain?

This is where the copyrighted work has enjoyed protection for the 50 or 70 years (depending on the country's law) after the death of the last surviving author, so it enters the public domain. Works in the public domain may be used freely without the permission from the heirs of the

former copyright owner or copyright office or Collective Management Organization (CMO). In arrangements of public domain works where substantial new creative work has been done then it automatically acquires copyright in that specific version by the author.

18. What about other Intellectual Property

Rights (IPRs) attached to a copyright work which has entered-into public domain? Some copyright works have other intellectual property rights (IPRs) attached to them, for example cartoon characters are often registered as trademarks, one must be sure there are no other legal rights attached to the copyright work. Due diligence must be taken before using someone else's work to be sure there are no other IPRs attached, if such rights are present you need to get permission from the owners of those IPRs.

19. Does copyright allow using works without permission of the right holder?

Most copyright laws provide for exceptions and limitations whereby one is allowed limited use without the permission of the copyright owner. One is not to use a substantial part of the copyright work and what is substantial is on a case-by-case basis. One is permitted to use the work exclusively for personal and private use, quotations, commentaries, criticism, scholarly reports, news reporting and illustrations, provided it meets the three-step test as enshrined in the Berne Convention. Most importantly is to acknowledge the source and the name of the author.

20. What is the three-step test?

The three-step test allows any person to use a copyrighted work without permission of the author: in special cases; the usage should not conflict with the normal exploitation of the work and the usage should not unreasonably prejudice the legitimate interest of the author.

For example, you will need to acknowledge the source and author of a book if you want to reproduce some paragraphs in a book chapter or a section for academic use. Reproducing a whole book will conflict with the normal exploitation of the work by the right holder and prejudice his/her legitimate interest, thus, permission is needed to reproduce and distribute a book.

21. When should one obtain permission to use copyrighted works?

One needs to get permission from the right holder if the use is a substantial part of the work which has not entered-into public domain or a specific new arrangement out of a public domain work. Whenever the use does not meet the three-step test permission is required.

22. Where can one obtain permission to use copyrighted works?

One can get permission from the right(s) holder, but it can be cumbersome to get permission from each right holder of the work that one wants to use a substantial part of it that is why there are Copyright Offices (CO) and Collective Management Organizations who can help you get the owners contacts, or they license you to use the work, they collect royalties and distribute to the right holders.

23. What is licensing?

Licensing is where the copyright owner authorizes others to carry out specified acts in relation to his economic rights. This can be done by him/her, or by a third party, preferably a CMO or any other group that has been assigned to license on their behalf.

24. What is a non-exclusive license?

A non-exclusive license shall entitle the licensee to carry out the act concerned concurrently with

the copyright owner.

25. What is an exclusive license?

This is a license which entitles the licensee to carry out the act concerned to the exclusion of all others including the copyright owner.

26. Who owns copyright in the work students produce as part of a course?

The students do own copyright unless there is an agreement between the institution and the students to the contrary. Ownership of copyright materials created by lecturers and students is usually addressed in the institution's policy on the ownership of IPRs. It is important for all students and lecturers to ask for this important document prior to generating intellectual property works.

27. If I change someone else's work, do I have copyright of the new work?

Copyright creates monopoly of the work to the owner but at the same time there is the access to the public to use the copyrighted work subject to exceptions and limitations. Only the owner of copyright in a work has the right to change or improve his work, or to authorize someone else to create, a new version or edition, adaptation, translation of that work. Upon getting consent you will only acquire copyright to the extent of the new creation of the work that you have created. The new work will normally be considered as a joint authorship.

28. What are Collective Management Organizations (CMOs)?

Collective management is the exercise of managing and licensing copyright and related rights by entities known as CMOs or Collecting Societies acting in the interest of and on behalf of the owners of rights.

There are various CMOs within the ARIPO Member States dealing with genres such as music, audio-visual, literary and other copyright works. The CMOs normally get mandates from the right holders, and they are mandated by the government or a supervisory authority to operate. Amongst the ARIPO Member States some serve as both as a Copyright Office and as a CMO, while others manage specific category of works.

29. What is the role of Collective Management Organizations (CMO's)?

CMOs implement the enabling legislation in their jurisdictions which include to facilitate legal access to users through licensing, monitor where, when and by whom the rights are used, negotiate tariffs on behalf of their right holders collect and distribute royalties to the right holders and enter into reciprocal or bilateral agreement with other CMOs.

30. What are the categories of Collective Management Organizations (CMO)?

Depending on the national legislation there are CMOs for different rights holders such as Music, Performers, Producers, Audio-visual, Literary, Visual Arts among others.

31. Can one own a website?

Yes, one can own a website. The content of the website must be chosen carefully. If materials which one upload on the website are not yours, you need clearance from copyright owners and acknowledge them. If one needs to link to other web pages then you must ensure that you do not deep link; passing the home page, rather you link to the home page.

32. How can a website be protected?

One can protect their website by using a password to provide permission to view the

work as well as require log in information and acceptance to the terms and conditions to access the website. Using statements like "the site owner does not accept any liability for wrongful use of the material contained on the site" may exonerate the site owners from liability.

33. How do I protect my copyright in an electronic environment?

Copyright comes into effect automatically as soon as an original work of authorship is made and fixed in a tangible form. You can include a copyright notice; express copyright statements on the extent of the usage of your work; adopting digital protection measures; retaining supporting evidence for proof of copyright ownership; and in some jurisdictions they have registration, depository and notification systems which will be of help in case of an infringement and there is need to prove ownership. Many forms of digital works may contain certain identifiers embedded in the electronic file.

34. What is copyright infringement?

Copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner and not within the requirements of the three-step test. The laws of the countries clearly stipulate what entails copyright infringement and the penalties for such infringement.

35. Does a copyright owner need contractual agreements?

Contractual agreements are very important to a copyright owner as it helps to administer some of the economic rights. Non-Disclosure Agreements (Confidentiality Agreements) are important while negotiating on the copyright work. This will prevent the person you are

negotiating with from disclosing anything to third parties or implementing your creative work.

Some of the importance of contractual agreements includes commercializing the work, partnering with someone to exploit the copyright work, joining a CMO, selling or transferring the work to someone else.

36. How do I get copyright protection in other countries?

Copyright work acquires automatic right by virtue of creation. Copyright is territorial so there are different copyright laws in the

different jurisdictions. Most of the countries are parties to international conventions and treaties such as the Berne Convention and The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS). The treaties have minimum standards and principles for countries to include in their national legislations, such as the "National Treatment Principle" which ensures there is no discrimination as each country is required to treat works from other countries in the same way as they treat the works of their own nationals.

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