

ECP-2005-CULT-038099

ATHENA

Overview of IPR legislation in relation to the objectives of Europeana

1 November 2008 – 30 April 2009

Deliverable number	<i>D6.1</i>
Dissemination level	<i>Public</i>
Delivery date	<i>31 July 2009</i>
Status	<i>Final</i>
Author(s)	<i>Barbara Dierickx (PACKED) in collaboration with Rony Vissers (PACKED). Revision of legislation by national IRP-experts.</i>



eContentplus

This project is funded under the eContentplus programme¹, a multiannual Community programme to make digital content in Europe more accessible, usable and exploitable.

¹ OJ L 79, 24.3.2005, p. 1.



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Summary

The goal of this report is to present an overview of Intellectual Property Rights legislation in relation to the objectives of Europeana.

The first section of the report looks at the regulatory frameworks of intellectual property rights. It examines the role of and the interaction between the relevant international treaties, the European Union directives and the national legislation.

The next section gives an overview of the scope of copyright. It discusses the economic and moral rights of the author (incl. reproduction rights and the right of communication to the public). It also gives a brief illustration of copyright exceptions and the role of the three-step-test. This chapter concludes with a presentation of the different rules for the term of protection of copyright-protected material.

The following chapter examines the copyright exceptions for cultural heritage institutions. It pays special attention to libraries, museums, archives and educational institutions. This section presents an overview of the exceptions for the use of works for educational purposes, for the display of works in a closed network, for the preservation of works and for the use of works containing technological protection measures. It also looks at the status and implementation of these exceptions.

This is followed by a chapter on databases. This section introduces the European database right. It also examines the author's right on databases and the differences between general copyright and database right. Furthermore it also indicates when cultural heritage institutions can call upon database right. This chapter concludes with an overview of the rules for the term of protection of databases.

This report also gives an overview of the issues that arise for orphan works and out-of-print works in relation to copyright. It gives some examples of the legislative initiatives to solve these problems.

Finally the report also draws some conclusions about the legislation on intellectual property in relation to the actual objectives of Europeana.

The report contains two annexes:

Annex I: Mappings of IPR-related legislative documents per partner country.

Annex II: Contact details of the national IPR-experts who revised the mappings mentioned above.

1. Foreword

1.1 Context of the deliverable

This report is the first deliverable of the ATHENA (Access to Cultural Heritage Networks Across Europe) working package on Intellectual Property Rights (D.6.1.). The report provides an overview of the legislation on intellectual property in relation to the objectives of Europeana (the European digital library)². Europeana's goal is to provide all European citizens with access to a broad digital variety of European culture through an online (searchable) portal.

The ATHENA project, a European Best Practice network within the eContentplus-programme, unites relevant stakeholders (museums and other cultural heritage institutions) from across Europe. Starting with its network of 24 partner countries, the project aims to establish a harmonised means of access to cultural collections by developing specific tools, based on a shared set of standards and guidelines. The different kinds of research that will be carried out within the ATHENA framework will in the end facilitate the delivery of digital museum collections to Europeana.

1.2 Methodology

In order to conduct this study, which mainly focuses on the legal situation in the 24 ATHENA partner countries, the following methodology was used:

1. Literature study

Based on a collection of relevant literature, a.o.

- MinervaEC Working Group (ed.), Minerva IPR guide, 2008;
- K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008;
- A. Beunen & T. Schiphof, Juridische Wegwijzer Archieven en Musea Online, 2006;
- G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007.

These works provided very useful information on intellectual property rights on a national, European and international level. ATHENA wishes to minimise duplication of work in this field, therefore parts of the above mentioned works were incorporated in this report.

The findings from comparing different national copyright legislations (see point 2) were also checked against the findings from the above literature.

Specifically, the publication 'Juridische Wegwijzer Archieven en Musea Online' (Legal Handbook Archives and Museums Online) formed the base of the mapping template that was created for this study (see point 3).

2. Collecting legislation

The IPR (Intellectual Property Rights) legislation from all ATHENA's partner countries³ was collected through the UNESCO Copyright Portal and through the national ATHENA contact points. Through those national contact points, national IPR-experts were contacted to ensure that the available version of the legislation was the most recent one.

3. Analysis and mapping of legislation

² For more information on Europeana, see <http://www.europeana.eu>. Note on online references: all hyperlinks in this document were accessible in July 2009.

³ ATHENA has 24 partner countries in the project: Azerbaijan, Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Israel, Italy, Latvia, Luxembourg, Malta, the Netherlands, Poland, Romania, Russia, Slovakia, Slovenia, Sweden, United Kingdom.

Based on the literature study and after discussion with the members of the steering committee (see point 4), a template was designed upon which the different legislations were mapped. The different legislations were analysed to determine what parts of it were relevant to be incorporated in this study. Based on the topics of legislation and the publication 'Juridische Wegwijzer Archieven en Musea Online', a mapping template was created.

To create the mapping, existing legislative documents translated in English, French, German or Dutch were used. This resulted in one document per country, as can be found in Annex I.

The mapping was then sent to the respective national contact point, who then passed it on to a national IPR-expert for revision. A list of names of these IPR-experts can be found in Annex II.

During this revision, the translated texts were verified and completed or updated if necessary. The mappings that were returned after revision served in turn as source material to compare legislation in the different countries.

Some countries were unable to finish the revision of their mapping in time.⁴ Wherever this was the case, the most recent available legislative text in English, French, German or Dutch served as source material.

4. Steering committee

The steering committee is formed by:

- Herman Croux (lawyer at Marx Van Ranst Vermeersch & Partners (Brussels). He mainly deals with international contracts and disputes, broad experience in the field of intellectual property and information technology)

- Annemarie Beunen (lecturer at the Law Faculty of Leiden University, eLaw@Leiden, Centre for Law in the Information Society. Promoted on the European Database Directive and works as copyright lawyer at the Royal Libray, The Hague).

This committee reviewed the mapping template before comparing the different legislations, and approved of the overall methodology to carry out this study. After comparing the different legislations and checking them against the wider European and international regulatory framework, a draft version of the research report was also presented to the steering committee.

⁴ This was the case in Israel.

2. Introduction

“Intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Intellectual property is divided into two categories: industrial property (which includes inventions (patents), trademarks, industrial designs, and geographic indications of source) and copyright (which includes literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs).” World Intellectual Property Organisation (WIPO)⁵

The activities of museums and other heritage institutions are centred around the management and preservation of material, the majority of which is still protected by copyright. Architectural drawings in display cabinets, images on a museum’s website or a work of installation art sitting in a storehouse ... the above WIPO definition indicates that these are all materials under copyright protection. When exhibiting physical objects in a museum, one always has to consider intellectual property rights; this is even more the case when a collection is being digitised and subsequently made accessible online to a large audience.

Within the framework of Europeana and similar digital library projects, the handling and management of intellectual property rights in an online museum context is becoming increasingly important. A heritage institution wanting to start the digitisation and online disclosure of its collections, will almost immediately be confronted with copyright. After all, digitising is a form of reproduction, and placing content online is a form of making the work available to the public. Both actions are, by means of copyright provisions, exclusively reserved to the author of the material, and not to the cultural heritage institution.⁶

Does this mean that a museum will not be able to disclose its holdings digitally? Not necessarily, since national copyright legislations provide exceptions in favour of heritage institutions, ensuring that material may be disclosed digitally under certain conditions. These exceptions will be presented extensively in the overview of national intellectual property rights legislations (see Annex I). However, older works are free of copyright. A right holder is unable to claim copyright protection after the term of protection of the work have expired. After a period of 70 years, starting from the death of the author, the work enters the public domain (see paragraph 4.4.4). This means that, from that moment on, anyone is free to use the work; this is also the case for use by and within museums. When the term of protection of a work have not yet expired, a museum can for example sign a license agreement with the creator of a particular work, in order to legally display it online. The signing of such an agreement in some cases may have (expensive) financial implications for the museum, especially when authors are represented by collective rights management organisations. In case there is no such representation, the museum is forced to undertake an often difficult and labour-intensive search for the individual right holder in order to obtain his permission for re-use of the work.

⁵ Definition of ‘Intellectual Property’ by WIPO, from <http://www.wipo.int/about-ip/en/>

⁶ MinervaEC Working Group (ed.), Minerva IPR Guide, 2008, pp. 14. Available online http://www.minervaeurope.org/IPR/IPR_guide.html



The European Commission acknowledged these problems in its i2010 programme⁷, and in the margins of this the Commission is trying to help cultural heritage institutions to handle intellectual property rights in their everyday practice. such as ATHENA⁸ and MinervaEC⁹ offer compliant IPR-guidelines and best practices. MinervaEC identifies some focus

Several legislative initiatives have been developed for this purpose; projects points with regards to digitisation in museums: “*The notion of public domain and [...] new legislative and policy trends such as orphan works, out-of-print works and user-generated content.*”¹⁰ Some of these topics¹¹ will be discussed more elaborately in this study.

7 ‘i2010’ is the European framework programme on information society and media. Through the programme, Europe wants to stimulate the positive impact of ICT (Information and Communication Technologies) on society. The ‘Digital Libraries Initiative’ was launched in 2005 as a part of this programme. The goal of this initiative is to make Europe’s cultural resources and heritage available and preserve it. Another key goal of this policy is the setting up of Europeana (the European digital library), described as “a single access point for consulting digital copies of the materials held by libraries, museums and archives”. More information on http://ec.europa.eu/information_society/activities/digital_libraries/index_en.htm

8 ATHENA (Access to Cultural Heritage Networks Across Europe) is a European Best Practice network within the eContentplus-programme. ATHENA unites relevant stakeholders (museums and other cultural heritage institutions) from across Europe. Starting from its network of 24 partner countries, the project wishes to establish a harmonised way of accessing cultural collections, by developing specific tools, based on a shared set of standards and guidelines. More information on <http://www.athenaeurope.org>

9 MinervaEC stands for ‘MInisterial NETwoRk for Valorising Activities in digitisation, eContentplus’ and is a thematic network and consortium of European stakeholders who are active in the cultural field. MinervaEC aims to coordinate national policies, programmes and cultural institutions, by supporting the ‘National Representatives Group’, made up of representatives of European ministries of culture. More information on <http://www.minervaeurope.org>

10 MinervaEC Working Group (ed.), *Minerva IPR Guide*, 2008, pp. 14. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

11 The licensing of user-generated content will not be discussed in this report. Within the Europeana framework, specific research will be carried out on this topic. More information on this can be found in the ‘Europeana v1.0 Description of Work’, available online http://version1.europeana.eu/c/document_library/get_file?uuid=cf720627-d351-48dc-9ef0-b10b326591d1&groupId=10602

3. Regulatory framework

The author's right has been incorporated in national European and international regulations. With the possibilities of new communication technologies and the internet it has also become a jurisdiction that can no longer only be regulated purely within national borders. Although copyright is still a national matter with national implementation, cross-border questions will arise when copyright legislation is applied.

In Europe as well as on a global scale, legislators try to ensure creative makers a proper legal protection for their intellectual creations by ordaining directives and treaties. A keyword in this matter is 'harmonisation'. This term indicates the process whereby several different nations adapt their laws in such a way that they match with respect to content.

A multitude of international organisations provides intellectual property rights with a prominent place in their own policy; WIPO¹² is one example since it promotes the protection of intellectual property by instigating cooperation between nations; UNESCO hosts an online 'Copyright Portal'¹³ and explicitly mentions intellectual property rights in its Convention on the Protection and Promotion of the Diversity of Cultural Expressions.¹⁴

3.1 International treaties

The first global agreements on the regulation of intellectual property were the Paris Convention for the Protection of Industrial Property¹⁵ of 1883 and the Berne Convention for the Protection of Literary and Artistic Works¹⁶ of 1886. Both conventions declared the minimum level of protection of industrial and intellectual property that the contractual states should grant their citizens. Both conventions laid the foundations for future agreements such as the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations¹⁷ of 1961

12 WIPO was involved in the creation of the WIPO Copyright Treaty of December 20, 1996. This treaty will be discussed further in 2.2.4.

13 For more information on the UNESCO Copyright Portal, see http://portal.unesco.org/culture/en/ev.php-URL_ID=12313&URL_DO=DO_TOPIC&URL_SECTION=201.html

14 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, October 2005.

15 The Paris Convention for the Protection of Industrial Property of March 20, 1883 as last amended on September 28, 1979. The convention aims at the regulation of industrial property in a broad sense, ranging from patents, brands, industrial designs, etc. The convention has an explicit economic focus and will, for this reason, not be discussed in detail in this report. Available online <http://www.wipo.int/treaties/en/ip/paris/>

16 The Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as last amended on September 28, 1979. This convention is based on the following principles: authors from the countries that are contracting partners of the convention should be protected in the same way in each of the other contracting states; the protection of the works may not be conditional and stands free from any already existing protection measure in the particular country. A 'work' should be seen as each production from the domain of literary, artistic or scientific work, no matter what form the work takes. The convention also deals with the protection of moral rights. Available online <http://www.wipo.int/treaties/en/ip/berne/>

17 The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of October 26, 1961. This convention broadened the scope of protection for the first time to neighbouring rights. The convention of Rome hereby provided protection for performers, producers of sound- and film recordings and broadcasting organizations. Available online <http://www.wipo.int/treaties/en/ip/rome/>

(concerning neighbouring rights), the Trade Related Aspects of Intellectual Property Rights (TRIPS)-agreement¹⁸ of 1994 and the WIPO Copyright Treaty¹⁹ of 1996.

3.1.1. The Berne Convention for the Protection of Literary and Artistic Works

The Berne Convention²⁰ already dates from 1886 but has been altered numerous times. One of the revisions resulted in the introduction of the three-step-test, a touchstone to check whether a copyright exception that has been implemented in a national legislation complies with international provisions from the Berne Convention.

*Art. 9 (2) It shall be a matter for legislation in the countries of the Union to permit the reproduction of such works in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author.*²¹

The ‘three steps’ included in this article, define that reproduction is only allowed

- in certain exceptional cases;
- provided that such reproduction does not conflict with a normal exploitation of the work; and
- provided that it does not unreasonably prejudice the legitimate interests of the author.

This test was designed to be able to rebuke contracting states in case they try to limit the scope of copyright too much in their country, by introducing broad copyright exceptions. In the case of a national legislation wishing to introduce a copyright exception, the exception will have to pass the ‘three-step-test’. In the case of the exception seemingly restricting the normal copyright, WTO can demand to stop the implementation of the exception, and sanction the particular country.

For an exception to pass the test, the three conditions in the test have to be met in a cumulative way. In reality this tool appears to have little compulsory character, and in addition the judgement on the acceptability of a national exception is often a case of national juridical interpretation.²² In any case, the convention allows for the possibility of quotation and the use of material for educational purposes:

Art. 10 (1) It shall be permissible to make quotations from a work which has already been lawfully made available to the public, provided that their making is compatible with fair

18 The TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement of April 15, 1994. The TRIPS-agreement was adopted as an annex of a World Trade Organisation (WTO) treaty. This indicated that intellectual property was now also seen as a full aspect of international trade. Available online <http://www.wipo.int/treaties/en/agreement/trips.html>

19 The WIPO Copyright Treaty of December 20, 1996. this treaty contains provisions that anticipated changing technology. The treaty guaranteed the protection of computer programmes in the same way as the protection of literary works, and the protection of databases. In the treaty, provisions on the circumvention of technological protection measures and the removal of rights management data were also included. Available online <http://www.wipo.int/treaties/en/ip/wct/>

20 Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as last amended on September 28, 1979. Available online <http://www.wipo.int/treaties/en/ip/berne/>

21 Berne Convention for the Protection of Literary and Artistic Works, September 28, 1979, Art. 9 (2). Available online <http://www.wipo.int/treaties/en/ip/berne/>

22 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 19-20. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

*practice, and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries. (2) It shall be a matter for legislation in the countries of the Union, and for special agreements existing or to be concluded between them, to permit the utilization, to the extent justified by the purpose, of literary or artistic works by way of illustration in publications, broadcasts or sound or visual recordings for teaching, provided such utilization is compatible with fair practice.*²³

3.1.2. The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations

Copyright also includes the so-called ‘neighbouring rights’, that offer protection to the performers of a work or those who take care of its further distribution. The protection is contentwise very similar to traditional copyright. The Rome Convention²⁴ laid the foundations for these neighbouring rights for performing artists, producers of films and music recordings and broadcasting organisations.²⁵

In this way the re-use of musical performances can yield profits for the performing artist and the producer who turns the performance into a sound recording. Besides the neighbouring rights, the original musical work is still under the author’s right as the original composer of the work. Neighbouring rights do not exclude the original copyright.

In the Rome Convention,²⁶ exceptions on the protection of neighbouring rights were created for, amongst others, the private use of material and the making of temporary recordings by broadcasting organisations. Art. 15 allows the contracting parties to expand these exceptions with the national exceptions they already know for the traditional author’s right.

*Art. 15 (1) Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards: (a) private use; (...) (c) ephemeral fixation by a broadcasting organisation by means of its own facilities and for its own broadcasts; (d) use solely for the purposes of teaching or scientific research. (2) Irrespective of paragraph 1 of this Art., any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organisations, as it provides for, in its domestic laws and regulations, in connection with the protection of copyright in literary and artistic works. (...)*²⁷

3.1.3. Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement

²³ Berne Convention for the Protection of Literary and Artistic Works, September 28, 1979, Art. 10 (1). Available online <http://www.wipo.int/treaties/en/ip/berne/>

²⁴ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of October 26, 1961. Available online <http://www.wipo.int/treaties/en/ip/rome/>

²⁵ European provisions on the protection of neighbouring rights can be found in the Directive 2001/29/EC.

²⁶ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of October 26, 1961. Available online <http://www.wipo.int/treaties/en/ip/rome/>

²⁷ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, October 26, 1961, Art. 15 (1). Available online <http://www.wipo.int/treaties/en/ip/rome/>

The TRIPS-agreement²⁸ is an annex of a global trade agreement that led to further harmonisation of the minimum rules were provided by the Berne and Rome conventions.²⁹ TRIPS, for example, also demands that the contracting states appoint national courts or other bodies for the execution of enforcement procedures on intellectual property rights.

The TRIPS-agreement contains its own version of Berne's three-step-test:

*Art. 13 Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.*³⁰

3.1.4. WIPO Copyright Treaty

This treaty was created in order to anticipate new technological developments since the declaration of the Berne Convention. This treaty also contains an adapted version of the three-step-test:

*Art. 10 (1) Contracting parties may, in their national legislation, provide for limitations of or exceptions to the rights granted to authors of literary and artistic Works under this Treaty in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author.*³¹

One of the new concepts that has emerged under the influence of technology is the protection of intellectual property by means of Digital Rights Management (DRM)-techniques³². The treaty called on the contracting states to legally prevent the possibility of circumvention of this kind of techniques by users:

*Art. 11 Contracting parties shall provide adequate legal protection and effective legal remedies against the circumvention of technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.*³³

3.2 European Union directives

At present day the European Union currently counts 27 member states all of which it tries to steer in the same direction concerning intellectual property rights, by means of issuing directives³⁴. The EU

28 TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement of April 15, 1994. Available online <http://www.wipo.int/treaties/en/agreement/trips.html>

29 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 21-22. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

30 TRIPS (Trade Related Aspects of Intellectual Property Rights) agreement, April 15, 1994, Art. 13. Available online <http://www.wipo.int/treaties/en/agreement/trips.html>

31 WIPO Copyright Treaty, December 20, 1996, Art. 10 (1). Available online <http://www.wipo.int/treaties/en/ip/wct/>

32 Digital Rights Management (DRM) is a technique to manage digital rights of right holders. Through digital security techniques, that can be connected to DRM, the right holder can restrict the legal rights of users. DRM-systems therefore have to be connected to usage agreements, in which is stated what kinds of use of the material are allowed or not without the permission of the right holder.

33 WIPO Copyright Treaty, December 20, 1996, Art. 11. Available online <http://www.wipo.int/treaties/en/ip/wct/>

34 A directive is a binding decision from the European Union containing regulations aimed at the member states of the Union. The member states are obliged to implement and exercise the provisions in the directive. The member states

has already issued several copyright-related directives, amongst others directives on computer software and databases.³⁵ Most directives point out certain legal exceptions that member states can implement in their national legislation to make the use of copyrighted material possible in libraries, museums, archives and educational institutions.

A very important initiative is the ‘Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society’, also called the Copyright Directive. This directive provides an extensive range of copyright exceptions, some especially for the benefit of libraries, archives and museums. In this Directive one also finds the Berne Convention three-step-test:³⁶

*Art. 5 (5) The exceptions and limitations (...) shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holder.*³⁷

The majority of copyright exceptions mentioned in the directive are optional; this means that member states can choose whether or not they implement them in their national legislation. In most cases, this does not lead to optimal results (see paragraph 3.3.).

The implementation of these directives happened very literally in some countries; the exact wording of the directive has been copied into national legislation. In other countries the implementation came into being after a process of political pressure and compromises. This resulted in differences in detail of the adoption of the directive in national legislations.³⁸

Within the framework of the i2010-policy and its attention for digital libraries, the European Commission has created a High Level Expert Group (HLEG). This group consists of stakeholders in the debate on digitisation and online dissemination of cultural material; cultural institutions, publishers, technological companies, academics ... Within this HLEG a so-called Copyright Subgroup discussed in particular the copyright problems related to online databases for cultural heritage. The findings and recommendations of this group can be found in their ‘Final Report on Digital Preservation, Orphan Works and Out-of- Print Works’.³⁹ The report discusses three areas that are important with regards to author’s rights: digital preservation (including web-harvesting); problems relating to orphan works and out-of-print works. The recommendations of this report will be discussed more elaborately in chapters 7 and 8.

however may choose the way they handle the exercise. In doing so, they should bear in mind the specific situation in their own country.

35 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases (see chapter 5). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

36 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 23-24. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

37 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 5 (5). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

38 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 23-24. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

39 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of- Print Works, June 4, 2008. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

3.3 National legislation

The regulation of copyright is a part of national legislation systems. Under the influence of international treaties and European directives, national copyright laws are becoming more standardized. Nevertheless, substantial differences still exist between the different nations.

In 2008 WIPO commissioned an investigation on copyright exceptions for libraries and archives.⁴⁰ The study tried to picture the actual status of these exceptions and their implementation. A remarkable end conclusion is that many countries, following the Directive 2001/29/EC, have provided for exceptions for libraries, museums and archives, but that these exceptions differ enormously in scope, targeted beneficiaries, permitted actions, etc.

The decision as to whether or not to implement the heritage-exceptions from the European Directive 2001/29/EC is motivated by historical and political choices, and the balance every country tries to make between the different parties involved. For example there are countries where the emphasis is on the author's interest; in others the emphasis is on user as beneficiary. An example of different copyright systems is the copyright model versus the 'droit d'auteur' model.⁴¹ The copyright model guarantees a financial return to the creative producers for the investment in their work. This model has its roots in the common law⁴² tradition, as applied in the United Kingdom and the United States. The 'droit d'auteur' model gives the author first and foremost non-transferable moral rights. This means that the author is seen as the creator of a work of which the integrity must be preserved. In consequence the work may not be adapted, distorted or used in any way possible that could damage the individual, authentic character of the work. The commercial exploitation of the work in the 'droit d'auteur' model is part of a set of exclusive rights. French copyright law is seen as a model example of droit d'auteur.⁴³

Depending on the tradition of an author's rights, certain kinds of re-use will or will not be exempted from the scope of copyright. The process of designing and adapting laws is a complex one. It is also usually a very time-consuming process, and as a result of this the legislation often falls behind fast evolving technology.

40 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, 434 p. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

41 MinervaEC Working Group (ed.), Minerva IPR Guide, 2008, pp. 13. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

42 'Common law' refers to a legal system that is developed through decisions of courts and similar tribunals (so-called case law), rather than through legislative statutes. This legal tradition has its roots in the United Kingdom. In common law, judges have the authority to make law by creating precedents. In future cases, when parties disagree on what the law is, an idealized common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision.

43 MinervaEC Working Group (ed.), Minerva IPR Guide, 2008, pp. 13. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

4. The scope of the copyright

4.1 The work and its author

As can be read in the WIPO definition, works benefiting from copyright protection are “[...] *literary and artistic works such as novels, poems and plays, films, musical works, artistic works such as drawings, paintings, photographs and sculptures, and architectural designs.*”⁴⁴ It would however be incorrect to assume that a work, in order to fall under copyright protection, should be ‘a work of art with a capital A’.⁴⁵

A work does have to testify originality; it has to be an original creation of the mind, but does not necessarily have to comply with aesthetic demands. Author’s rights can not rest just on an idea; the idea has to be executed in such a way that is perceivable by the senses.⁴⁶

Generally speaking the copyright holder is the author or the creator of the work. Copyright grants him or her exclusive control over the use of the work so that he can earn financial profits from the exploitation of the work and compensate for the effort invested in the creation the work. The author can give his or her permission for specific cases in which the work can be used in return for remuneration (or for free, or under specified conditions, ...).⁴⁷ The copyright on a work may be held by several authors at the same time, for example in a film production on which often several creators work together.⁴⁸

4.2 Types of rights

4.2.1. Economic rights

Economic rights guarantee creative makers a financial return for the investment in the creation of their work. In contrast to moral rights, a right holder can transfer his economic rights; the receiving party may then exploit the work commercially. This is one of the reasons why signing a license agreement with an artist can have considerable financial implications for a museum. In most cases the artist should be remunerated for use of the work. However, he could also choose to have his work used for free, or under a specified license such as Creative Commons.⁴⁹

44 Definition of ‘Intellectual Property’ by WIPO, from <http://www.wipo.int/about-ip/en/>

45 A. Beunen & T. Schiphof, *Juridische Wegwijzer Archieven en Musea Online*, 2006, pp. 16-17. Available online [http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische wegwijzer/JuridischeWegwijzerPrint.pdf](http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische%20wegwijzer/JuridischeWegwijzerPrint.pdf) (Dutch only)

46 MinervaEC Working Group (ed.), *Minerva IPR Guide*, 2008, pp. 14-15. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

47 A. Beunen & T. Schiphof, *Juridische Wegwijzer Archieven en Musea Online*, 2006, pp. 15. Available online [http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische wegwijzer/JuridischeWegwijzerPrint.pdf](http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische%20wegwijzer/JuridischeWegwijzerPrint.pdf) (Dutch only)

48 MinervaEC Working Group (ed.), *Minerva IPR Guide*, 2008, pp. 16. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

49 The Creative Commons tools give everyone from individual creators to large companies and institutions a simple, standardized way to grant copyright permissions for their creative work. The Creative Commons licenses enable people to easily change their copyright terms from the default of “all rights reserved” to “some rights reserved.” CC provides free licenses to mark creative work with the freedom the creator wants it to carry, so others can share, remix, use commercially, or any combination thereof. More information on <http://creativecommons.org/>. More on Creative Commons and use in heritage institutions can be found under paragraph 7.2.2. Emerging licensing models.

This does not mean that the user gets a free pass to deform or adapt the work. The creation of reproductions, including digital ones, and successive availability of the material online is an infringement of the economic rights of the author. Since the issuing of Directive 2001/29/EC, the economic rights for authors have become harmonised on a European level.⁵⁰ They can be divided into reproduction rights and the right of communication to the public.

4.2.1.1. *Reproduction rights*

A cultural heritage institution should ensure itself that it has the permission to publish items from its holdings online. As stated in the introduction, the placing of an item in an online environment equals reproduction and communication to the public. Both actions fall within the scope of copyright. The cultural heritage institution should therefore check in advance whether it has the right to reproduce a certain item.

Art. 2 of Directive 2001/29/EC obliges member states to implement a broad reproduction right, which is granted to authors and holders of neighbouring rights:

*Art. 2 Member States shall provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part.*⁵¹

Minor variations between member states can be observed. Most member states already had reproduction rights in place in their national legislation. Rights for permanent reproduction were already established by these provisions. If we look at the regulation on the making of temporary copies, (which are made when we browse web pages), we see that the article from the Directive 2001/29/EC was not adopted identically in every member state. In some countries the interpretation of the concept ‘temporary reproductions’ was subject to debate.⁵²

4.2.1.2. *Right of communication to the public*

The right of communication to the public, as described in Art. 3 Directive 2001/29/EC, is present in all member states. It is an exclusive right of the author and is also applicable to neighbouring rights.

*Art. 3 Member States shall provide authors with the exclusive right to authorise or prohibit any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.*⁵³

50 MinervaEC Working Group (ed.), *Minerva IPR Guide*, 2008, pp. 17. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

51 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 2. Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

52 G. Westkamp, *The Implementation of Directive 2001/29/EC in the Member States*, 2007, pp. 2-4. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

53 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 3. Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

An author has, by any means, the exclusive right to communicate his work or have it communicated to the public. The author can grant permission to perform his work live (e.g. a theatre play), but he can also permit communication of his work by means of radio, satellite or cable.

Influenced by the increasing digitisation, Directive 2001/29/EC also mentions “[...] *the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.*”⁵⁴ This provision covers the placing of works online and reflects the changing trend in the supply of copyrighted material to the users (and buyers): film and music is nowadays streamed via the internet, browsers can display images of a work. The right of communication to the public gives authors and holders of neighbouring rights the possibility to effectively control this supply of content.

4.2.2. Moral rights

Moral rights are rights within copyright that protect the personal link between the work and its maker. Moral rights describe certain elements of author’s rights that are non-transferable. It concerns personal rights of the author.

Moral rights can be further subdivided. This way the author has a right of paternity: this ensures the author that the work will be attributed to him. The author also has a right of integrity, insuring him that the work may not be altered without his explicit permission. The author can oppose the alteration or distortion of the work, to prevent the damaging of his reputation or name (or correct it). It is not allowed to put the work in another context than its original one, for example to use the work in advertising or for purposes of propaganda. In some cases, the author can not oppose small, less interfering changes to his work, like the making of a thumbnail of a digital image.

The right of communication to the public (see paragraph 4.2.1.2.) is a part of the moral rights of the author. The author can decide whether or not he wants to bring his work to the market or make it available to the public. No one else can take this decision for him.

In the European Union member states, the author holds both moral and economic rights to his work. The author or creator of the work may transfer the economic (but not the moral) rights on his work, with or without remuneration.

4.3 Copyright exceptions and the three-step-test

By means of the conditions set by the international three-step-test,⁵⁵ a judge can make a discriminate judgement regarding the balance of interests between the right holders on the one hand, and the users (such as heritage institutions wanting to disclose their material) on the other.

The three-step-test states that copyright exceptions are only allowed

- in certain exceptional cases
- provided that such reproduction does not conflict with a normal exploitation of the work

⁵⁴ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 3. Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

⁵⁵ Berne Convention for the Protection of Literary and Artistic Works, September 28, 1979 (see paragraph 2.1.1.). Available online <http://www.wipo.int/treaties/en/ip/berne/>

- provided that it does not unreasonably harm the legitimate interests of the author⁵⁶
The conditions of the test are cumulative.

The status of the three-step-test varies significantly between the member states. A number of member states has explicitly implemented the test as an element of their national legislation, by means of a directly applicable rule for the interpretation of limitations. That way, by checking the three rules, a judge can assess the validity of exceptions in certain particular cases.⁵⁷ As stated before, in reality this test is non-mandatory in nature, which is why the assessment of an exception is often a case of national juridical interpretation.⁵⁸

4.4 Term of protection

4.4.1. General rule

An author (or his heirs) can not call on copyright forever. The term of protection is limited and is determined by law. In Europe the general rule is that copyright lasts for the lifetime of the author plus 70 years after his death. After the death of the creator, copyright automatically transfers to his heirs.⁵⁹

It is up to the right holder himself to determine whether he wishes to rigidly exercise and maintain his author's rights. He could for example also choose to let others use his work for free.

4.4.2. Deviations of the general rule

Works of which the creator is unknown are protected for a shorter term than the general rule: author's rights will last for 70 years after the first lawful publication of the work.

Art. 1 (3) In the case of anonymous or pseudonymous works, the term of protection shall run for 70 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.⁶⁰

If the creator makes himself known before the expiration of that term, the work is no longer anonymous and the term of protection automatically changes into the general applicable term (70

56 Berne Convention for the Protection of Literary and Artistic Works, September 28, 1979, Art. 9 (2). Available online <http://www.wipo.int/treaties/en/ip/berne/>

57 G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007, pp. 48-49. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

58 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 19-20. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

59 Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, Art. 1. Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0116:en:HTML>

60 Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, Art. 1 (3). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0116:en:HTML>

years after his death). Only the creator himself can reveal his identity; his heirs can not do this (anymore).⁶¹

In some cases the name of the author can not be found. If it is impossible for a heritage institution to trace the author, the work is labelled an ‘orphan work’. This type of work (orphan work) will be discussed in chapter 7.

If more than one person contributed to the creation of the work, it is known as being of joint authorship. The protection in case of a joint authorship lasts for 70 years after the death of the last living author.

*Art. 1 (2) In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.*⁶²

Films have been given a separate provision concerning their term of protection: the author’s right ends 70 years after the death of the longest living of the following persons:

- the principal director;
- the author of the screenplay;
- the author of the dialogue;
- the composer of music.

*Art. 2 (1) The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors. (2) The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: 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 audiovisual work.*⁶³

In Russia and Latvia, additional provisions regarding the term of protection are in place:

- Russia: *“If the author was repressed and rehabilitated posthumously the exclusive right period is prolonged and the 70 years term is counted from the rehabilitation date. If the author worked during the Great Patriotic War (1941-1945) or took part in it the term of the exclusive right is prolonged for 4 years.”*⁶⁴
- Latvia: *“As to authors, whose works were prohibited in Latvia or the use of which was restricted from June 1940 to May 1990, the years of prohibition or restriction shall be excluded from the term of the copyright.”*⁶⁵

61 A. Beunen & T. Schiphof, *Juridische Wegwijzer Archieven en Musea Online*, 2006, pp. 24-25. Available online [http://www.taskforce-archieven.nl/document.aspx?id=WIU/Juridische wegwijzer/JuridischeWegwijzerPrint.pdf](http://www.taskforce-archieven.nl/document.aspx?id=WIU/Juridische%20wegwijzer/JuridischeWegwijzerPrint.pdf) (Dutch only)

62 Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, Art. 1 (2). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0116:en:HTML>

63 Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, Art. 2 (1). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0116:en:HTML>

64 Civil Code of the Russian Federation, Fourth Part. Edited and translated by Peter B. Maggs and Alexei N. Zhiltsov. Moscow: Wolters Kluwer, 2008, Art. 1281 (4-5)

65 Copyright law of Latvia with amending laws of 6 March 2003 and 22 April 2004, Art. 37 (4).

An exceptional case is the ‘finder’s right’ or ‘editio-princeps-right’. This is a copyright-related right that exists in all European member states. It offers copyright protection to any person who for the first time lawfully publishes or communicates a work to the public which was previously unpublished. This person can enjoy economic protection for 25 years, starting from the date of publication:

*Art. 4 Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.*⁶⁶

4.4.3. Neighbouring rights

Neighbouring rights are in general protected for a term of 50 years in the European Union:

*Art. 3 (1-4). The rights of performers shall expire 50 years after the date of the performance [...] the rights of producers of phonograms shall expire 50 years after the fixation is made [...] the rights of producers of the first fixation of a film shall expire 50 years after the fixation is made [...] the rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.*⁶⁷

4.4.4. After expiration of the term of protection

Some EU member states have additional provisions in place for the respecting of moral rights after the term of protection has expired. This is the case in Bulgaria and Greece:

- Bulgaria: “After the expiration of the term of copyright protection, the works may be used freely, respecting the other provisions in the Copyright Act. The State (Ministry of Culture) shall monitor the observance of these rights and may, exceptionally, permit changes to be made in such works.”⁶⁸
- Greece: “After the expiry of the period of copyright protection, the State, represented by the Minister of Culture, may exercise the rights relating to the acknowledgment of the author’s paternity and the rights relating to the protection of the integrity of the work deriving from the moral rights in this Act.”⁶⁹

In cases where the term of protection of a work has expired, the work enters the ‘public domain’. This means that it can be used by anyone and for any purpose, without remuneration.⁷⁰ Azerbaijan

⁶⁶ Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, Art. 4. Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0116:en:HTML>

⁶⁷ Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, Art. 3 (1-4). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0116:en:HTML>

⁶⁸ Law on Copyright and Neighbouring Rights of Bulgaria, No. 56 (1993), as amended through No. 32 (2009), Art. 34.

⁶⁹ Copyright, Related Rights and Cultural Matters: Greek Law No. 2121/1993 as amended by Law No. 3057/2002 (article 81) and by Law 3207/2003 (article 10 par. 33) and by Law 3524/2007 (articles 1 and 2), Art. 29 (2).

⁷⁰ A remark has to be made on the neighbouring rights that are related to the use of a work in the public domain. The text of a theatre play may for example have fallen into the public domain, while the video recording of a performance of the piece could still have neighbouring rights protection.



is an exception ('domaine public payant') by stating that "[...] *the works of Azerbaijani creators, deemed fallen into the public domain, could be recognized public domain by an authorized body and for its utilization could be established special payments. That royalty shall be transferred into Azerbaijan's state budget.*"⁷¹

Europeana is also aware of the importance of the public domain; this is the easiest category of works to publish online because obtaining permission to use the work is not necessary. Horst Forster (Directorate General 'Information Society and Media', European Commission) stated several times over the past few years that: "[...] *content that is now in the public domain should stay there, at the disposal of everyone, without the risk of disappearing behind technical or other barriers. [...] material that is in the public domain in the analogue world stays in the public domain in the digital world.*"⁷²

71 Art. 27 Law on Copyright and Related Rights of the Republic of Azerbaijan, No. 203 (1996).

72 Horst Forster, in: 'Summary Minutes of the 2nd Meeting of the Member States' Expert Group on digitisation and digital preservation', 13 December 2007, Luxembourg and 'Providing Citizens with sustainable and reliable digital access to Europe's cultural heritage', 16 September 2004, The Hague.

5. Copyright exceptions for libraries, museums, archives and educational institutions

5.1 Introduction

Libraries and archives often have a (public) mission to preserve, manage and make certain collections available to the public. In the execution of these tasks they are confronted with copyright, for example when making reproductions of protected works for study purposes, or for replacing material that has already deteriorated.

In order to make such actions possible, Europe introduced, also under the influence of the digital trend, some legal exceptions to safeguard and facilitate the preservation and disclosure of cultural heritage. These specific copyright exceptions for libraries, museums, archives and educational institutions state that certain reproductions and certain communications to the public of heritage materials do not require explicit right holder's permission. This does not mean that such institutions are offered a wide range of action; the exceptions have in many cases a very specific application. Only certain works may be reproduced, for specific purposes and under detailed conditions.

To give the security of these exceptions a more concrete form, libraries, archives and museums often sign license agreements with right holders, in which the exceptional provisions in the benefit of these institutions are explicitly stated. On the other hand, right holders can also get active and determine, in a contractual agreement, that the institution can not rely on a copyright exception for the use of the material that is subject to the agreement.

Although Directive 2001/29/EC tried to achieve harmonisation of these exceptions and their implementation, a diverse approaches amongst European countries are still significant. The exceptions that are stated in Directive 2001/29/EC are after all optional in nature. This leaves the member states the possibility to decide for themselves whether to implement the exception or not, and to decide about the extent to which they do so. This kind of choice has as a consequence that certain forms of use are considered an exception in one member state, and not in another.

Some of these exceptions will be discussed further on in this report. Not all exceptions that Europe allows have been adopted in national legislations. A museum should therefore always check whether the exception has been adopted in its own country or not.⁷³

Both the services libraries, museums and archives wish to offer and the nature of the works protected by copyright are changing fast. The exceptions that are provided for libraries, museums, archives and educational institutions in national legislation, are often a reflection of a legislative decision that was made in the (sometimes far distant) past. This causes a tension between what institutions would like to do with their material, and what they are allowed to do with it, according to the law.⁷⁴

The range of exceptions on hand and their interpretation seems to be falling behind on technological developments and social expectations.

73 MinervaEC Working Group (ed.), *Minerva IPR Guide*, 2008, pp. 19-21. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

74 K. Crews, *Study on Copyright Limitations and Exceptions for Libraries and Archives*, 2008, pp. 27-28. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

5.2 Exceptions

5.2.1. Exceptions for education

All member states provide exceptions for the use of copyright protected works in education. Some member states prescribe that a fair remuneration should be paid to the right holder.

The scope of the provisions varies significantly; in some countries the exception does not cover all types of educational institutions, like in Germany: *“It is permitted to make available and reproduce small (parts of) works for the purposes of education in schools and higher education establishments (except for universities) and for a limited group of pupils or students.”*⁷⁵ The distinction between the various types of institutions which the Directive 2001/29/EC refers to will be discussed further in paragraph 5.2.5.

In other countries not all types of works may be used without permission for educational purposes. Greece, for example, states that *“[...] reproduction of lawfully published literary works of one or more writers in educational textbooks approved for use in primary and secondary education by the Ministry of National Education and Religions or another competent ministry [...] shall be permissible without the consent of the authors and without payment.”*⁷⁶ In Finland *“[...] published works may be publicly performed for educational purposes. This is not the case for cinematographic or dramatic works: cinematographic works may only be publicly performed for university level cinematographic education.”*⁷⁷

In general one could argue that, in the context of educational activities, components of the work may be used as illustrative material as part of the subject matter without permission of the author, but with indication of his name and the title of the work. Quoted excerpts may thus also be included in a syllabus. It is also permitted to make reproductions of magazine articles or other written works, for the same purpose; provided that the use of the reproduction is restricted to the classroom.

In some countries works may also be performed (e.g. theatre play) in a school context, on the condition that the audience has a connection to the school. The non-commercial nature of this performance is often stressed, e.g. in Romania: *“The representation and execution of a work as part of the activities of educational establishments is permitted, exclusively for specific purposes and provided that both the representation or execution and the public’s access are free of charge.”*⁷⁸

5.2.2. Exceptions for closed network display

Because the activities of libraries often include the act of ‘communication to the public’, Europe has introduced an exception that allows to make collection material digitally available to a user. This is however only possible on-site, through a closed network, and on the premises of the particular institution.

75 Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz) 1965, zuletzt geändert durch das Gesetz vom 7. Dezember 2008, Art. 52a (1,3).

76 Copyright, Related Rights and Cultural Matters: Greek Law No. 2121/1993 as amended by Law No. 3057/2002 (article 81) and by Law 3207/2003 (article 10 par. 33) and by Law 3524/2007 (articles 1 and 2), Art. 20 (1,3).

77 Copyright Act of Finland, Law 14.10.2005/821, amending the Copyright Act (8.7.1961/404), Art. 21, Art. 16c.

78 Law on Copyright and Neighbouring Rights of Romania (No. 8 of March 14, 1996), including amendments by Law no. 285/2004, GEO no.123/2005 and Law no. 329/2006, Art. 33 (1) (g).

*Art. 5 (3) (n) Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3 in the following cases: use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections.*⁷⁹

The exception was literally implemented in most EU-countries, except for Slovenia, Sweden, Greece, Latvia and the UK.⁸⁰

In the majority of European countries this exception has been adopted and such institutions are therefore permitted to make works available from their own collection to the public, for the purpose of research or private study, through dedicated terminals on the premises of the institution. The works that are communicated this way may not be subject to a contractual statement indicating that this action (the act of communication through on-site terminals) is forbidden. The institutions holding the terminals may not earn any direct or indirect economic benefit from this making available. The exception on making available through dedicated terminals also applies to neighbouring rights.

This exception is only applicable to the act of the digital providing availability of material. In the Czech Republic the exception also includes the production of temporary reproductions, since this is part of the process of making material available: *“Libraries, archives and museums may make a work available to members of the public (including the making of a reproduction needed for such availability) by dedicated terminals located on its premises.”*⁸¹ In Germany the number of reproductions for this communication is restricted: *“The number of copies made available at the same time may not exceed the number of copies within the institution. [...] An adequate remuneration has to be paid; this can happen through a collective rights management organisation.”*⁸² In German copyright law the obligation of remuneration has also been included.

Some countries add to the provision from the Directive 2001/29/EC that the institutions making the work available should take the necessary steps to prevent any further unlawful use of the temporary reproduction: *“A library can only use the work if secure means against any alteration, retransmission and copying have been put in place.”*⁸³

This exception on the right of communication to the public allows users in most cases only to ‘perceive’ the material (read, watch, hear) without making an actual copy of it. It also only allows for communication within a closed network circuit. This implies that making available online

⁷⁹ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 5 (3) (n). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

⁸⁰ G. Westkamp, *The Implementation of Directive 2001/29/EC in the Member States*, 2007, pp. 45-48. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

⁸¹ Czech Republic Act No. 121/2000 on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended by Act No. 81/2005, Act No. 61/2006 and Act No. 216/2006, Art. 37 (1).

⁸² Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz) 1965, zuletzt geändert durch das Gesetz vom 7. Dezember 2008, Art. 52b.

⁸³ Copyright Act of Hungary, No. LXXVI (1999), as amended through No. CXII (2008), 117/2004 (IV.28) Gov. Decree.

(without exception) falls under the general copyright regulations. The closed network exception is a step in the direction of the new services provided by libraries and related institutions, but open online digital libraries as anticipated by the European Commission and as shaped by Europeana can not get any benefit from it.

The fact that digital material can only be accessed in a closed network environment has been debated in some countries. Guido Westkamp refers, for example, to Hungary, where it is being investigated whether the limited use of works within institutions can be extended to mutual use over an intranet in order to be able to disclose digitised reproductions that are held in different libraries and archives, through one network. This already tends more towards the shape of a pan-European digital library and thereby exceeds the exception provisions in the Directive 2001/29/EC.⁸⁴

Italy already seems to be one step ahead: the publication of low quality music recordings on the internet is permitted for free use for educational and scientific purposes, on condition that no commercial goals are being pursued. This exception has been formulated in a decree by the Ministry of Education, University and Research.⁸⁵

This Italian provision is comparable to the trend of the free online placing of thumbnails (small, low resolution images). In the USA the display of thumbnails on the internet was accepted as ‘fair use’, considering the small size of the image and the non-commercial nature of their usage context.⁸⁶

5.2.3. Exceptions for preservation

5.2.3.1. In general

A third category of exceptions deals with the safeguarding and preservation of collections. This often requires the creation of reproductions, analogue or digital, of works that are facing a risk of becoming, or already have, deteriorated.

In the field of cultural heritage, ‘digital’ is now the common or even standard form in which collections are preserved. The making of a digital reproduction can happen for preservation purposes. But by offering digital material the library can at the same time easily make its collections available to the public. Active ‘preservation’ in general covers the creation of a copy of a work to ensure its everlasting availability, before it gets lost for some reason. With the creation of a reproduction of the work one anticipates the eventual loss of the work.⁸⁷ This kind of preservation is based upon the repeated copying from one medium to another to preserve the ‘readability’ of the work. A work on VHS-tape can for example easily be migrated to a digital video format. The videotape will deteriorate over a certain period of time, and the necessary playback and display equipment will become obsolete.

84 G. Westkamp, *The Implementation of Directive 2001/29/EC in the Member States*, 2007, pp. 26-27. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

85 This was decided after an amendment of the Italian Copyright Act on 9 January 2008, Art. 2.

86 A. Beunen & T. Schiphof, *Juridische Wegwijzer Archieven en Musea Online*, 2006, pp. 37-38. Available online [http://www.taskforce-archieven.nl/document.aspx?id=WIU/Juridische wegwijzer/JuridischeWegwijzerPrint.pdf](http://www.taskforce-archieven.nl/document.aspx?id=WIU/Juridische%20wegwijzer/JuridischeWegwijzerPrint.pdf) (Dutch only)

87 K. Crews, *Study on Copyright Limitations and Exceptions for Libraries and Archives*, 2008, pp. 50-51. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

Relevant for digital preservation is the exception in Art. 5 (2) (c) of Directive 2001/29/EC:

*Art. 5 (2) (c) [...] specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage.*⁸⁸

Due to the fact that this exception is also optional, the kind of active preservation as mentioned above is not legally possible in every country. In the Netherlands and Romania, digitisation is only allowed in case of (a real threat of) deterioration. In the Netherlands: *“The same conditions apply in case of retention of a reproduction of the work for the institution if the specimen is threatening to fall into disrepair and in order to keep the work in a condition in which it can be consulted if there is no technology available to render it accessible.”*⁸⁹ And Romania: *“It is permitted to reproduce brief excerpts from works for information or research within the framework of libraries, museums, film archives, sound archives, archives of non-profit cultural or scientific public institutions; the complete reproduction of a copy of a work shall be allowed for the replacement of the sole copy in such an archive or library’s permanent collection in the event of the destruction, serious deterioration or loss thereof.”*⁹⁰ The provision from the Netherlands also allows preventive migration of digital material to other formats, in order to keep the work accessible.

In Russia it is only possible to reproduce works that have already been lost or damaged: *“Libraries and archives are allowed to make a single non-profit-making copy of a legitimately published work, either to repair or replace copies of a work which have been lost or damaged or to provide this copy to other libraries which for some reason have lost the works concerned from their collection.”*⁹¹ This implicates that acts of preservation are actually carried out too late (and miss their purpose), or can not be carried out anymore.

In the ‘WIPO-study on Copyright Limitations and Exceptions for Libraries and Archives’ from 2008, two interesting cases (from Finland and Estonia) illustrate the reproduction for preservation:⁹²

“Finnish law includes the concept of “completion,” under which the library may make copies of a work for the specific purpose of either completing a work or filling in a missing part of a work that is published in multiple parts. Examples of completion might include the making of portions of a book to replace missing pages, or making a copy of a book or other work that is one volume in a set, such as one volume from an encyclopaedia. Under Finnish law, the doctrine of completion applies to any type of work, so the library might use it for copying a book or copying a disk in a set of DVDs. The provision [...] applies only if the work is not available through commercial means [...]. Estonia [...] its preservation statute

⁸⁸ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 5 (2) (c). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

⁸⁹ Copyright Act of the Netherlands (1912) as amended (2006); Related Rights Act of the Netherlands (1993); Databases Act of the Netherlands (1999), Art. 16n Copyright Act.

⁹⁰ Romanian Law on Copyright and Neighbouring Rights (No. 8 of March 14, 1996), including amendments by Law no. 285/2004, GEO no.123/2005 and Law no. 329/2006, Art. 33 (1) (d).

⁹¹ Civil Code of the Russian Federation, Fourth Part & Federal Law “On Librarianship” #122-FZ, 22.08.04 with changes #183-FZ, 27.10.2008, Art. 1275 (1).

⁹² K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 53. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

*includes the explicit right to make a digital collection for preservation purposes. The statute requires that the library search the market for a purchase, but even if the work is available, the library's right to make a digital preservation copy remains. Apparently, the law of Estonia permits libraries to build extensive collections of digital copies, although it is not clear when or whether those copies may be used [...]."*⁹³

These cases illustrate how exceptions for preservation and replacement are a reflection of the tension between allowing for the needs of cultural heritage institutions, and the protection of the interests of the right holders involved (e.g. the demand of the initial search for an available copy on the market).

The High Level Expert Group Copyright Subgroup acknowledges in its Final Report⁹⁴ that in some cases digitisation can be the only means to ensure that cultural heritage material will remain accessible for future generations.⁹⁵ In addition to this the Copyright Subgroup points out that the exception for preservation on the reproduction right from the Directive 2001/29/EC⁹⁶ alone, and in the different ways it has been implemented by the member states, is insufficient.⁹⁷ But at the same time recommendations formulated in the report do not allow for much more than the exceptions in Directive 2001/29/EC:⁹⁸

Successive copying should be allowed to take place if and when technological developments are seen to require such a measure, for preservation purposes only, subject to the safeguarding of the individual publication's identity and integrity;

Preservation should be justified only for works that are no longer commercially available in any format. If the work is available on the market, there is no need to preserve it except within national libraries' deposit schemes;

*Coordination should take place amongst the various preservation initiatives at regional and national levels and across the European Union, to avoid duplication both among different initiatives and also with national 'legal deposit' libraries.*⁹⁹

93 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 53. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

94 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of- Print Works, June 4, 2008. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

95 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of- Print Works, June 4, 2008, pp. 7-8. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

96 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 5 (2) (c). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

97 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of- Print Works, June 4, 2008, pp. 7-8. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

98 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of- Print Works, June 4, 2008, pp. 7-8. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

99 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of- Print Works, June 4, 2008, pp. 7-8. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

The HLEG notes that in the case of born-digital material, if it has a built-in protection mechanism, publishers and national libraries may sign an agreement in which it is stated that this protection mechanism will be shut off in case of deposit in a national library (but not for offering access to the material for end users).¹⁰⁰

This agreement helps cultural heritage institutions with regards to some of their tasks (the actual preservation), but does not increase the accessibility of collections for the public. It does not allow for the disclosure, and it is exactly this possibility that could be an important impulse for the digitization and the preservation of cultural heritage material. The possibility of disclosure is an important factor in the justification of the high digitisation costs that have to be covered by the society.

5.2.3.2. *Digital media for reproduction*

Amongst the European member states, differences exist concerning what type of material may be copied, and for which specific purpose. Even within one country alone statements regarding this can be different; it may be possible that it is permitted for each type of work to be copied for preservation purposes (text, moving image, computer software), but that only books and articles may be copied for ‘research purposes’.¹⁰¹ It is advised that cultural heritage institutions always checks very carefully which types of work are eligible for which actions.

It can not be denied that digital media is becoming more and more present in libraries. Next to the analogue book medium one can find CDs, DVDs and digital periodicals; library users ask for scanned newspaper pages that are digitally provided. Digital storage and delivery means faster and more efficient access for users. Digital formats also facilitate the retrievability of collections. Therefore the European member states also acknowledge the importance of digital media for long term storage and eventually increasing accessibility for end users.

However, as a consequence of the Directive 2001/29/EC, the member states do not explicitly embrace ‘the digital’. In Italy, for example, the law clearly states that digital reproduction is not permitted. Only reprographic copying on paper is allowed. The allowance or non-allowance of digital reproductions is arranged in the definition of ‘copy’ or ‘reproduction’; only explicit mention as to whether copying to a digital medium is allowed or not can bring clarity.

5.2.4. Exceptions for technological protection measures

With the declaration of the WIPO Copyright Treaty in 1996¹⁰² the international copyright community laid the foundations for the use of technological protection measures by the author on

100 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of-Print Works, June 4, 2008, pp. 7-8. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

101 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 35. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

102 WIPO Copyright Treaty of December 20, 1996 (see paragraph 3.2.4.). Available online <http://www.wipo.int/treaties/en/ip/wct/>

his or her work.¹⁰³ This kind of measures is described in Directive 2001/29/EC as “[...] *any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the right holder of any copyright or any right related to copyright [...]*”¹⁰⁴

The provision states that technological protection measures should protect against unjustified use (= not permitted by a right holder) of the work, and that they were designed to prevent circumvention. However, the article is not entirely clear. Germany for example interpreted this article as only applicable to tools that were designed to protect works against actions that are not permitted by copyright (e.g. unjustified reproduction, unlimited distribution of the work, ...). The consequence of this interpretation is that for example the breaking, ‘circumventing’ of a regional code on a DVD in order to view it for domestic use, is not an infringement of Art. 6 (1) since the code in itself offers no protection against an illegal act (the viewing of materials for domestic purposes is in itself not a violation of copyright). Because of this, actions that do not form a violation of the exclusive rights of the author are in Germany exempted from the scope of technological protection measures.¹⁰⁵

In another part of Art. 6 it is stated that:

*Art. 6 (1) Member States shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.*¹⁰⁶

This article suggests that the person performing the act of circumvention should be aware of the fact that he or she is pursuing that goal. Most member states have implemented this demand of ‘awareness’ (except for Slovenia and Slovakia and those member states who did not implement Art. 6 (1)).¹⁰⁷ Art. 6 (1) was implemented in all member states except for Cyprus, Czech Republic and Slovakia. Other member states have implemented Art. 6 (1) as an annex to the list of exclusive rights.¹⁰⁸

When the access to a work or the use of it is controlled by technical means that ensure the desired protection, these will be deemed as ‘effective’. This formulation was transposed literally from the

103 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 64-65. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

104 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 6 (3). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

105 G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007, pp. 51-61. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

106 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 6 (1). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

107 G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007, pp. 51-61. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

108 G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007, pp. 51-61. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

Directive 2001/29/EC in nearly all member states; in Slovakia and Sweden the demand for technological protection measures to be effective was not transposed.¹⁰⁹

Art. 6 (3) Technological measures shall be deemed ‘effective’ where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.¹¹⁰

5.2.4.1. Enforcement of exceptions for libraries, museums, archives and educational institutions

The Directive 2001/29/EC seems to entirely favour the right holder, through the introduction of additional protection measures. However also exceptions for cultural heritage institutions are also provided so that materials can be used without such technological protection by non-profit institutions such as the before mentioned libraries, museums, archives and educational institutions. The exceptions concern the reproduction of works. These beneficiaries should, in case of the absence of such technological protection measures, be able to benefit normally from certain exceptions as described in paragraph 5.2.

Art. 6 (4) Notwithstanding the legal protection provided for in paragraph 1, in the absence of voluntary measures taken by right holders, including agreements between right holders and other parties concerned, Member States shall take appropriate measures to ensure that right holders make available to the beneficiary of an exception or limitation provided for in national law in accordance with Article 5(2)(a), (2)(c), (2)(d), (2)(e), (3)(a), (3)(b) or (3)(e) the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation and where that beneficiary has legal access to the protected work or subject-matter concerned.¹¹¹

The exception measure was formulated in such a way that the responsibility for ensuring the different means of access to works which are granted to cultural institutions, is in the hands of the right holder. This is the person who put the protection measures in place, so he is the one who will have to ensure the permitted usage. This could be done in many ways; through a voluntary agreement, or, in case a solution can not be reached, through governmental intervention. In some member states one could start a mediation or arbitration procedure may have to be decided in court. In such a way, beneficiaries in Luxembourg can start a procedure at the District Court in order to

109 G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007, pp. 51-61. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

110 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 6 (3). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

111 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 6 (4). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML> Cyprus strangely enough implemented Art. 6 (4), although Art. 6 (1) Directive 2001/29/EC had not been adopted. Art. 6 (4) was not implemented in the Czech Republic, the Netherlands and Poland.

get access to material.¹¹² Similar court provisions have been introduced in Belgium, Cyprus, Germany and Malta.¹¹³

In other member states procedures may be started with certain entitled bodies: in Sweden and the UK such complaints can be heard by the Secretary of State and the Copyright Tribunal, in France the Authority for Regulation of Technological Measures will make a judgement.¹¹⁴ These kinds of institutions can oblige the right holder to make the materials available according to the provisions of the particular exception.¹¹⁵

5.2.4.2. Protection of rights management data

Rights management data is information that has been applied to the work by the right holder, explaining who the right holder or author is and what the terms of use are for the work. This information can be displayed as text or as (numeric or other) code.¹¹⁶

Art. 7 (1) Member States shall provide for adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information;*
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of Works or other subject-matter protected under this Directive or under Chapter III of Directive 96/9/EC from which electronic rights-management information has been removed or altered without authority, if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by law, or of the sui generis right provided for in Chapter III of Directive 96/9/EC.¹¹⁷*

Directive 2001/29/EC provides protection against unlawful removal or alteration of this information on the work (Art. 7 (1)). It is also prohibited to distribute a work of which the right management data have been modified as illustrated above. This measure has not been adopted in Finland.¹¹⁸

The Polish copyright law gives an extensive example of how the author, whose information on right management has been modified or removed, can be compensated for this. The author may ask to

112 G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007, pp. 66-68. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

113 G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007, pp. 66-68. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

114 G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007, pp. 66-68. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

115 G. Westkamp, The Implementation of Directive 2001/29/EC in the Member States, 2007, pp. 66-68. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

116 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 7 (2). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

117 Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 7 (1). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

118 This provision was not adopted by Israel and Azerbaidjan since they are non members of the European Union.

“[...] eliminate the consequences of the infringement, to repair the inflicted damage on the general terms or by payment of double or where the infringement is culpable, triple the amount of respective remuneration that would have been due as of the time of claiming it in exchange for the right holder’s consent for the use of the work, to render the acquired benefits. Moreover, the right holder may demand a single or multiple announcements of a press declaration having the proper wording and form, or communicating to the public all or a part of a court pronouncement issued in the examined case, in the manner and within the scope defined by the court.”¹¹⁹

5.2.5. Status and implementation of exceptions

Art. 5 (2) (c) Directive 2001/29/EC states that “[...] *specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage*”¹²⁰ and has been implemented in all member states. The provision allows for exceptions on the reproduction right in certain non-profit institutions. A number of aspects that are covered under this article can simultaneously also be covered by the exceptions for private copying or educational use.

The scope of the exception varies on the types of institutions covered, as well as on the specific uses and goals of the action described in the exception (reproduction, distribution, preservation, ...).¹²¹

5.2.5.1. Educational institutions

In Belgium, Estonia, Finland, France, Greece, Latvia, Slovakia, the Netherlands and the United Kingdom, the scope of exceptions as provided for in Art. 5 Directive 2001/29/EC, is restricted to libraries, museums and archives without explicitly referring to educational institutions.¹²² These countries provide separate exceptions for use of material for educational purposes, study or research. In Cyprus, Romania and Sweden, educational institutions are not mentioned, but scientific libraries are (without making a distinction whether they are publicly accessible or not).

5.2.5.2. Other institutions

The range of beneficiaries or ‘types’ of libraries that can call upon an exception could be defined very broadly, or very narrowly. The exceptions as provided for in Art. 5 Directive 2001/29/EC are only applicable for libraries and archives in Greece, Latvia, Slovakia, the United Kingdom and Sweden.¹²³ In a number of member states it is required that copies only be made from source

¹¹⁹ Copyright and Related Rights Act of Poland, No. 90 (2006), as amended through Alteration of the Law on Copyrights and Neighbouring Rights No 121 (2006), 21 (2006), 94 (2006), 99 (2007), 181 (2007), Art. 79.

¹²⁰ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, Art. 5 (2) (c). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001L0029:EN:HTML>

¹²¹ G. Westkamp, *The Implementation of Directive 2001/29/EC in the Member States*, 2007, pp. 22-25. Available online http://ec.europa.eu/internal_market/copyright/docs/studies/infosoc-study-annex_en.pdf

¹²² This is also the case in Israel and Azerbaidjan.

¹²³ This is also the case for Russia, Azerbaidjan and Israel.

copies in the possession of the cultural institution, as is the case in Estonia, Greece, the Netherlands, Slovenia and Slovakia.

In most member states libraries that are seen as beneficiary of an exception, have some sort of public service mission. They are public libraries, academic or school libraries. Sometimes the exception is applicable to a broader range of non-profit libraries, for example to libraries that are part of a museum or political party organisation.¹²⁴

Some examples:

- Czech Republic: libraries, archives and museums (and also galleries, schools, universities and other non-profit school-related and educational establishments);
- Finland: archives, libraries or museums open to the public, to be determined in a Government Decree;
- Greece: non profit-making libraries or archives;
- Hungary: publicly accessible libraries, educational establishments, museums and archives (as well as audio audiovisual archives);
- Romania: libraries, museums, film archives, sound archives, archives of non-profit cultural or scientific public institutions;
- Sweden: governmental and municipal archival authorities, the National Archive for Recorded Sound and Moving Images, scientific and research libraries that are operated by public authorities, and public libraries;
- United Kingdom: a prescribed library or archive of a description prescribed for the purposes of that provision by regulations made by the Secretary of State.

National copyright laws also often mention ‘archives’. An archive directs its functioning more towards the preservation of materials than towards facilitating the access to its collections (what a library explicitly does). Both types of institution, however, have the same copyright concerns (making reproductions of certain items for research, preservation and other purposes). The mentioning of archives in the legislation ensures that these institutions can also benefit from the advantages of the exception.¹²⁵ Member states which also explicitly mention museums as beneficiaries of the exception, are Belgium, Bulgaria, Czech Republic, Estonia, France, the Netherlands, Germany, Hungary, Italy, Luxembourg, Malta, Romania and Slovenia.

The extension of the scope of a provision of exception (for example by the explicit inclusion of all different types of archives) can also be a reflection of the changing role of this kind of ‘collecting spaces’ in society.¹²⁶ The creation of digital libraries after all only makes sense when as much different content as possible finds its way to the internet (something which the provisions in the Directive 2001/29/EC do not facilitate or make possible). This material is often widespread amongst many different types of heritage institutions, making it very restrictive to acknowledge only ‘libraries’ as beneficiaries of the exception.

124 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 31-33. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

125 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 31-33. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

126 K. Crews, Study on Copyright Limitations and Exceptions for Libraries and Archives, 2008, pp. 31-33. Available online http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=109192

6. Databases

6.1 The European database right

The European database right, as regulated by Directive 96/9/EC, is part of the provisions on intellectual property. The database right was implemented by all countries of the European Union.

In the provision from the Directive 96/9/EC, the word ‘database’ seems to cover a very broad spectrum, but it does not cover peripheral equipment:

*Art. 1 (2) [...] ‘database’ shall mean a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means. (3) Protection under this Directive shall not apply to computer programs used in the making or operation of databases accessible by electronic means.*¹²⁷

A database could be analogue as well as digital. Beunen and Schiphof indicate some digital examples: “[...] searchable data collections on CD-rom (heritage collection, encyclopaedia, etc), entire websites, parts of websites (such as an image- or photograph bank), ... Also an ordered overview with accesses, in the way archives put these online, is probably a database.”¹²⁸

In determining what rights may be applicable to a database, it is not important whether the elements in the database are copyright protected or not. The database as a whole can be copyright protected as well as protected by the specific database right.

6.2 Copyright

The author’s right over a database depends on who designed the original selection and/or classification of the contents:

*Art. 3 (1) In accordance with this Directive, 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. No other criteria shall be applied to determine their eligibility for that protection. (2) The copyright protection of databases provided for by this Directive shall not extend to their contents and shall be without prejudice to any rights subsisting in those contents themselves.*¹²⁹

The author is:

Art. 4 (1) The author of a database shall be the natural person or group of natural persons who created the base or, where the legislation of the Member States so permits, the legal person designated as the right holder by that legislation. (2) Where collective works are recognized by the legislation of a Member State, the economic rights shall be owned by the

127 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 1 (2). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

128 A. Beunen & T. Schiphof, *Juridische Wegwijzer Archieven en Musea Online*, 2006, pp. 56. Available online [http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische wegwijzer/JuridischeWegwijzerPrint.pdf](http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische%20wegwijzer/JuridischeWegwijzerPrint.pdf) (Dutch only)

129 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 3 (1). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

person holding the copyright. (3) In respect of a database created by a group of natural persons jointly, the exclusive rights shall be owned jointly.¹³⁰

Europe grants the creator of a database a set of exclusive rights:

Art. 5 In respect of the expression of the database which is protectable by copyright, the author of a database shall have the exclusive right to carry out or to authorize:

(a) temporary or permanent reproduction by any means and in any form, in whole or in part;

(b) translation, adaptation, arrangement and any other alteration;

(c) any form of distribution to the public of the database or of copies thereof. The first sale in the Community of a copy of the database by the right holder or with his consent shall exhaust the right to control resale of that copy within the Community;

(d) any communication, display or performance to the public;

(e) any reproduction, distribution, communication, display or performance to the public of the results of the acts referred to in (b).¹³¹

The exceptions to this are:

Art. 6 (2) (b) Member States shall have the option of providing for limitations on the rights set out in Article 5 in the case where there is use for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved. (d) Member States shall have the option of providing for limitations on the rights set out in Article 5 in the case where other exceptions to copyright which are traditionally authorized under national law are involved. (3) In accordance with the Berne Convention for the protection of Literary and Artistic Works, this Article may not be interpreted in such a way as to allow its application to be used in a manner which unreasonably prejudices the right holder's legitimate interests or conflicts with normal exploitation of the database.¹³²

Art. 6(2) (d) is particularly important for cultural heritage institutions: it allows member states to apply their existing national copyright exceptions to the copyright on databases as well.

As stated before a database will only fall under copyright protection if it proves to have an original selection of content or an original classification of its elements. In most cases the database of a museum (for example) is a mere functional object that first of all has to be easily searchable and has to provide an overview of data in/about the collection. In this kind of database one won't find much originality.¹³³ As 'author' of a database, a cultural heritage institution will only be able to claim protection of its database in a few cases.

130 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 4 (1). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

131 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 5. Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

132 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 6 (2) (b, d), (3). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

133 A. Beunen & T. Schiphof, *Juridische Wegwijzer Archieven en Musea Online*, 2006, pp. 57-58. Available online

6.3 Cultural heritage institutions and the database right

In some cases heritage institutions can call upon database right. When a museum substantially invests in an online image bank or website, it will be, as producer, the right holder of the database:

Art. 7 (1) Member States shall provide for a right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

(2) For the purposes of this Chapter:

(a) 'extraction' shall mean the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;

(b) 're-utilization' shall mean any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the Community by the right holder or with his consent shall exhaust the right to control resale of that copy within the Community;

Public lending is not an act of extraction or re-utilization. [...]

(5) The repeated and systematic extraction and/or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.¹³⁴

At the same time, heritage institutions may hold database or partial databases in their collection on which possibly others hold database rights, like donated collections (private archives, a collection of written mail correspondence, etc.).¹³⁵

6.4 Term of protection

6.4.1 Copyright

The creator of the original selection/classification of the material in the database enjoys protection for 70 years after his or her death.

6.4.2 Database right

The database right only provides for a term of protection of 15 years, starting from the completion of the database. In case the database is made public within this period, the term of 15 years will

[http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische wegwijzer/JuridischeWegwijzerPrint.pdf](http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische%20wegwijzer/JuridischeWegwijzerPrint.pdf)
(Dutch only)

¹³⁴ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 7 (1), (2), (5). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

¹³⁵ A. Beunen & T. Schiphof, *Juridische Wegwijzer Archieven en Musea Online*, 2006, pp. 56. Available online [http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische wegwijzer/JuridischeWegwijzerPrint.pdf](http://www.taskforce-archieven.nl/document.aspx?id=/WIU/Juridische%20wegwijzer/JuridischeWegwijzerPrint.pdf)
(Dutch only)

start from the date of the making available.¹³⁶ It is possible that an existing database gets a new term of protection. This is the case when a database has changed substantially in such a serious way (deletion, alteration, addition of content to the database) that one can speak of a ‘new’ database. In this case a new term of protection (of 15 years) will apply.¹³⁷ The assessment of a ‘substantial change’ is however subject to interpretation.

Art. 10 (1) The right provided for in Article 7 shall run from the date of completion of the making of the database. It shall expire fifteen years from the first of January of the year following the date of completion. (2) In the case of a database which is made available to the public in whatever manner before expiry of the period provided for in paragraph 1, the term of protection by that right shall expire fifteen years from the first of January of the year following the date when the database was first made available to the public. (3) Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.¹³⁸

Compared to copyright in general and the exceptions on it in favour of users such as libraries, archives, museums and educational institutions, the database right is very limited. It only allows for parts of the database to be copied if the copy is used as illustrative material in education or scientific research. No exceptions to the database right are provided for archives, museums and libraries in the role of users. A cultural heritage institution is not allowed to make reproductions for the purpose of preservation without the explicit consent of the author, nor for the purpose of disclosing the database through a closed network (such as provided for in general copyright regulations, see paragraph 4.2.2.).

Art. 9 Member States may stipulate that lawful users of a database which is made available to the public in whatever manner may, without the authorization of its maker, extract or re-utilize a substantial part of its contents (a) in the case of extraction for private purposes of the contents of a non-electronic database; (b) in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved.¹³⁹

136 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 10 (2). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

137 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 10 (3). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

138 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 10 (1). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

139 Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, Art. 9 (a, b). Available online <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996L0009:EN:HTML>

7. Orphan works

7.1 In general

An orphan work is a work that still falls under copyright protection, but whose right holder can't be identified (and contacted). Orphan works are problematic for their users; the permission to use or exploit these works can not be obtained. Since copyright demands that the permission of the right holder has to be obtained prior to the use, a lot of works are threatened with becoming obsolete or lost. Heritage institutions wishing to disclose them can not obtain permission to do so (juridical insecurity).¹⁴⁰

A huge amount of material produced in the last 100 years (and whereof the creator has probably not been dead yet for 70 years), have become orphan works in such a way. This material (such as old television footage, documentary images, photographs and pictures) can not be reproduced, placed online, or be included in other, new works without permission of the right holder.¹⁴¹

Out of fear, cultural heritage institutions will often leave orphan materials untouched. After all, if the right holder shows up after the use of the particular work, this could lead to (expensive) compensation claims and/or juridical procedures.¹⁴²

7.2 Legislative initiatives

7.2.1. Current developments

Not so much legislation exists on the topic, but in the context of the development of digital libraries it has been given much attention, on a national as well as a European level.

An important initiative on orphan works has been initiated by the European Union within the i2010 Digital Libraries initiative (see introduction, chapter 2). The High Level Expert Group (HLEG) that was set up in order to investigate the different legal, technological and economic factors in the 'digital libraries' idea also communicated on orphan works.¹⁴³ A 'Memorandum of Understanding on orphan works' was signed in 2008 by an extensive group of stakeholders. The document defines which search efforts should be undertaken by a user before the work can be labelled as 'orphan'.¹⁴⁴

140 MinervaEC Working Group (ed.), Minerva IPR Guide, 2008, pp. 22-23. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

141 MinervaEC Working Group (ed.), Minerva IPR Guide, 2008, pp. 22-23. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

142 Several European research projects have tackled the problematic topic of orphan works. Examples are the MILE project (Metadata Image Library Exploitation) <http://www.mileproject.eu/> and the ongoing ARROW project (Accessible Registries of Rights Information and Orphan Works towards Europeana) <http://www.arrow-net.eu>. Earlier studies were the 'Report on Orphan works', USA Copyright Office 2006, 'Digitale ontsluiting van historische archieven, studie naar de oplossingen in diverse landen' (Frankrijk, Duitsland, Groot-Brtannië, Canada, Zweden, VS) from the Dutch Ministry of Justice, 2008, <http://www.wodc.nl/onderzoeksdatabase/ontsluiting-historische-archieven-en-auteursrecht-hoe-beter.aspx?cp=44&cs=6796> and the JISC report 'In From the Cold', 2009, <http://www.jisc.ac.uk/publications/documents/infromthecold.aspx>

143 MinervaEC Working Group (ed.), Minerva IPR Guide, 2008, pp. 22-23. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

144 MinervaEC Working Group (ed.), Minerva IPR Guide, 2008, pp. 22-23. Available online http://www.minervaeurope.org/IPR/IPR_guide.html

Afterwards a couple of guidelines or solutions on the topic of orphan works were formulated. In the Final Report of the Copyright Subgroup of this High Level Expert Group, the following actions were presented:

- *Diligent search criteria that a user needs to fulfil prior to the use of the work. (Diligent search for right holders to the work, and clearance of rights, will normally be carried out in the country of origin of the work when identifiable).*
- *Database(s) (DB) of orphan works to facilitate users in their search, which is needed irrespective of any legislative solution.*
- *A rights clearance procedure and (a) Rights Clearance Centre(s) (RCC) to grant licences when they can be offered by a mechanism set up by right holders.*
- *National solutions which may include legislative/regulatory support and mutual recognition of different solutions in various Member States to achieve the cross-border effect needed for the European Digital Libraries (EDL).¹⁴⁵*

It is obvious that Europe would like to coordinate the discussion, but that it is left up to the member states to decide what a pragmatic solution should look like (see elements above). They should strive towards a system of national solutions that are at the same time interoperable on a European level. The Commission leaves it up to the member states to establish contractual and/or legal mechanisms in cooperation with the different interested parties. As a result of this the solutions that are designed by the different member states may differ, but they all have to comply with a number of fundamental principles. These are also presented in the Final Report:

- *Cover all orphan works (those with unidentified or non locatable right holders), on the basis of a shared definition;*
- *Include guidance on diligent search;*
- *Include provision for withdrawal if the right holder reappears;*
- *Offer cultural, not-profit establishments a special treatment when fulfilling their dissemination purposes, to be further discussed between stakeholders;*
- *Include requirement for general remuneration or remuneration if the right holder reappears.¹⁴⁶*

With regards to ‘harmonisation’, one uniformed European (or preferably worldwide) regulation for orphan works is preferred over a multitude of diverging national regulations. This would make it also easier for users to be able to consult the correct regulation.

7.2.2. Emerging licensing models

Another solution for dealing with orphan works that was already successfully introduced in Scandinavian legislations is the extended collective license.¹⁴⁷ This idea is based on the

¹⁴⁵ i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of-Print Works, June 4, 2008, pp. 25. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

¹⁴⁶ i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of-Print Works, June 4, 2008, pp. 15. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

encouragement of the collective management of rights. Although a lot of right holders become members of a collective rights management organisation, it is possible that the right holder being looked for in a particular situation is not a member of a collective rights management organisation. In that case a juridical provision exists to cover these ‘missing authors’; the so-called ‘extensive collective license’. In Scandinavian countries such a license is for example already being applied to musical works for use in radio- and television broadcasts. In particular this means that when a broadcasting organisation receives a license for broadcasting music works from a collective rights management organisation representing a significant number of musical composers and writers of lyrics, this license will also be extended legally to those composers and writers that are not represented by the collective rights management organisation. The extended collective license is as such automatically applicable to all right holders in a certain field (music, literature, ...); including the authors of orphan works. In this way one can use all works to which the license applies, without having to undertake a search for the right holder.

147 The Finnish Copyright Act provides an example of the use of collective licenses for reproduction: “Copies of published works may be reproduced through photocopying or similar means on the basis of an extended collective license: photocopying is subject to an extended collective license and is not considered a copyright limitation.” (Finnish Copyright Act, Law 14.10.2005/821, amending the Copyright Act (8.7.1961/404), Art. 13).

8. Out-of-Print Works

8.1 In general

After a certain period of time a work is sometimes no longer available on the market. As a result of poor sales, a publisher can decide to stop reprinting the work. Because of this certain books, films, sound recordings, .. only become available through libraries and similar centres; the work has become ‘out-of-print’. Albeit a commercial copy may no longer be available, this does not mean that the work itself is no longer copyright protected: the normal copyright legislation still applies.

A result of this is that a library can not do whatever it wants with the work, let alone distribute it. Yet there are cases in which the further distribution of already digitised out-of-print material can be a win-win solution for multiple parties involved.¹⁴⁸ Marco Ricolfi (HLEG) illustrates this with an example:

“Once an old, rare book is digitised by an institution, there is no reason for a sister institution to duplicate the cost. If the digitised copy is made available to the sister institution, this fact should normally not have a material adverse impact on commercial exploitation, as also the additional use would be restricted to on the premises consultation. Moreover, every time a book is out of print, it may be that the right holders are not interested in its further commercial exploitation; therefore they may well be prepared to consent to an even wider dissemination, beyond the restricted networks of public institutions. The main hurdle to the adoption of these win-win solutions would appear to consist of transaction costs. It would appear that transaction costs can be mitigated by standardisation of contractual arrangements; if they are subject to the scrutiny of the different stakeholders’ associations, members may well assume that a balanced solution has been worked out.”¹⁴⁹

8.2 Legislative initiatives

In the Final Report of the earlier mentioned High Level Expert Group, out-of-print works are also a point of interest. The report offers a definition for works that are ‘out-of-print’: works of which the right holder has stated that they are no longer commercially available. A work is not considered to be ‘out-of-print’ as long as it is still commercially available, for example through online access or ‘print-on-demand’.¹⁵⁰

With this report the HLEG wanted to instigate the wider distribution of digitised out-of-print works, suggesting measures that comply with existing exceptions for digitisation and disclosure. It wanted to stimulate through model licences for example, the creation of agreements between right holders and cultural heritage institutions on making digitised out-of-print works available within closed networks.

148 M. Ricolfi, in: M. Ricolfi, ‘Copyright Policy for digital libraries in the context of the i2010 strategy’, 2008, pp. 7-8. Available online <http://www.communia-project.eu/node/110>

149 M. Ricolfi, in: M. Ricolfi, ‘Copyright Policy for digital libraries in the context of the i2010 strategy’, 2008, pp. 7-8. Available online <http://www.communia-project.eu/node/110>

150 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of-Print Works, June 4, 2008. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm



The solution that is proposed by the report is based on four elements:

- two model licenses – one for use in closed networks and one for online distribution;
- national databases for out-of-print works;
- national ‘Right Clearance Centres’ (RCC);
- a clearly defined procedure for the clearance of rights.

The two model licenses are clearly in line with modes of digitisation and communication to the public that are not allowed by existing exceptions.

Model licence I¹⁵¹ offers a practical solution and with that a beginning of negotiation between right holders and libraries that wish to digitise the work and make it available through a closed network.

Model licence II¹⁵² offers broader possibilities for disclosure; this licence also allows for making works available in an open network. The purpose of these model licenses is to provide parties with a starting point for negotiations when putting together license agreements for providing online and off-site access to out-of-print works by libraries.

Just as for ‘orphan works’ the report proposes to create dedicated ‘Rights Clearance Centres’ and databases with ‘out-of-print works’ in order to facilitate the licensing process. Existing collective rights management organisations could take up the role of RCC.

151 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of-Print Works, June 4, 2008, Annex 3. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

152 i2010 Digital Libraries High Level Expert Group (HLEG), Final Report on Digital Preservation, Orphan Works and Out-of-Print Works, June 4, 2008, Annex 4. Available online http://ec.europa.eu/information_society/activities/digital_libraries/experts/hleg/meetings/index_en.htm

9. Conclusion

The goal of this report was to create an overview of the relevant intellectual property legislation in the ATHENA partner countries, in relation to the functioning of Europeana. For an online portal website like Europeana, wanting to offer access to digital cultural heritage collections, it is important that objects are not placed online unlawfully; something that is as equally important to Europeana as to those who contribute the content (the museums and other cultural heritage institutions).

The present regulatory framework provides no comprehensive exemption for all forms of digitisation, archiving and disclosure that cultural institutions would like to perform; neither Europe nor the member states provide a single uniform package of guidelines on digitisation, online publication and distribution of digital cultural heritage. Cultural institutions are mostly supposed to find out for themselves which exceptions are provided by the existing legislation, and how they can be applied for their benefit with regards to making content available online.

This overview's point of departure was the European Directives on intellectual property rights, in which exceptions are provided for libraries, museums, archives and educational institutions. Not all member states explicitly mention 'museums' as beneficiary; because of this it is also important to take into consideration the options for libraries and archives. Europeana strives to make the widest range of cultural content possible available. As such, collections from both museums and archives as well as from scientific libraries are targeted.

The available exceptions (restricted in number, specific in description and often subject to restrictive interpretation) only allow for specific acts to happen without the permission of the right holders (whether or not against obliged remuneration). One example is the remarkable exception to the right of communication to the public. Only works that are part of a collection of the institution and that are not subject to contradicting contractual conditions, may be communicated to a restricted audience through a closed network located on the premises of the institution. Such description is at odds with the ambitions and goals of Europeana, as an open portal that can be consulted through the internet.

Cultural heritage institutions that want to place digital objects online and that want to do this in a legal manner, are still confronted with a complex multitude of laws, guidelines and the like. Despite efforts to make it more transparent, the legislation concerning author's rights is still not straightforward information for users without a legal background. Exception procedures, such as for example the removal of DRM-security for cultural heritage institutions, are rarely known about. Consequently they are not called upon very often. All of this leads to a situation of judicial insecurity with regards to the different permissions that have or have not to be obtained from different right holders or collective rights management organisations. There also does not exist a central place that one can address for all relevant legislations on intellectual property rights. The same goes for a single database containing information on orphan works or out-of-print works.

Although the European Union makes a strong point for the harmonisation of legislation in member states, cultural heritage institutions are still advised to check their own national legislation. The reason for this is that the national implementation of European directive provisions can differ from one member state to another. As a result not every EU member state applies the same provisions (for example the mentioning of 'museums' in the exceptions or not). In addition the judicial interpretation of the European regulation can also differ from one country to another (e.g. when

applying the three-step-test). More questions tend to arise regarding to the global scale of the internet; should one comply with the legislation of all countries, since the works will be accessible everywhere? Or is it sufficient in this case to (only) comply with a national legislation or European provision?

The greatest problem with the present regulation of intellectual property seems to be the discrepancy between what can be governed legally and the trends we already see happening amongst users. Legislation is lagging behind with practices such as 'print-on-demand', digital preservation and the construction of digital libraries, user-generated content and web 2.0. The daily use of material is made more difficult because legislation can not keep up with the pace of the fast technological evolution. In comparison with the juridical protection it grants to right holders, the European Union still pays too little attention to the justified interests of the cultural heritage institutions, ... The development of digital libraries will only make sense when as much different content as possible finds its way onto the internet; something which the provisions in the Directive 2001/29/EC alone will not facilitate or make possible.

To conclude this report we would also like to point out that as a reaction to the lagging behind of the legislation new forms of licenses have been developed by IPR experts. The Creative Commons licenses are an example of this emerging new kind of licenses. In the study 'Creative Commons Licences for cultural heritage institutions, a Dutch perspective',¹⁵³ Esther Hoorn illustrates the characteristics of these licenses: *"CC Licences are standardized agreements between a rights holder and any possible user, based on which the user get a right to access the work for free and to use it according to the licence grant. The user in turn is under a contractual obligation to act in accordance with the licence grants. In the background of the Creative Commons movement lies a broad vision on voluntary sharing behaviour in the digital environment. In the digital environment technology itself has a strong regulatory effect. Rights holders can by exclusive contracts and technological measures exercise an almost perfect control over access to their works. This is problematic for the way copyright law works in society. In earlier times copyright law was never that easy to enforce and there was always a scale of re-use possible. Moreover copyright is a balanced regime and perfect control can endanger the public interests that are also embedded in copyright law. It is part of the Creative Commons philosophy to put trust in the possibilities of people to regulate their behaviour and to settle their disputes by contact as alternative to enforcement by limiting access by technical means."*¹⁵⁴ The possibility for heritage organisations to use Creative Commons licenses, or other open content licenses, will be explored in another deliverable of Work Package 6 of this project. That report will cover the use of new and emerging licensing models alongside state-of-the art Digital Rights Management techniques. The report, D.6.3., is due April 2010. It will be made available on the ATHENA website.¹⁵⁵

153 E. Hoorn, Creative Commons Licences for cultural heritage institutions, a Dutch perspective, 2006, 73 p.

154 E. Hoorn, Creative Commons Licences for cultural heritage institutions, a Dutch perspective, 2006, pp. 8-9.
Available online <http://rechten.eldoc.ub.rug.nl/FILES/root/Algemeen/Recht2/2007/CC/CC.pdf>

155 The ATHENA website is accessible through the following link <http://www.athenaeurope.org>

Annex I

AZERBAIJAN
BELGIUM
BULGARIA
CYPRUS
CZECH REPUBLIC
ESTONIA
FINLAND
FRANCE
GERMANY
GREECE
HUNGARY
ISRAEL
ITALY
LATVIA
LUXEMBOURG
MALTA
POLAND
ROMANIA
RUSSIA
SLOVAKIA
SLOVENIA
SWEDEN
THE NETHERLANDS
UNITED KINGDOM

Country

Azerbaijan

Act

Law on Copyright and Related Rights of the Republic of Azerbaijan, No. 203 (1996)

I. General Provisions

The Scope of the Act

This law governs the relations arising in the territory of the Republic of Azerbaijan from the creation and exploitation of scientific, literary and artistic works (copyright) and of performances, phonograms, programs of broadcasting or cable distribution (relaying) organizations (related rights).¹⁵⁶

An author is the physical person creating the work¹⁵⁷: he shall enjoy personal (non-property) rights in relation to his work¹⁵⁸; the author or other legal holder shall enjoy the exclusive right to exploit this works in any form and by any means, except cases according to the law.¹⁵⁹

Copyright extends to scientific, literary and artistic works that are the product of creative work, disclosed or undisclosed but being in any objective form, regardless of the purpose, the merit and the manner of expression thereof.¹⁶⁰ The Act includes a list of types of works that are protected by copyright. **161**

Further specifications are given for presumption of authorship¹⁶², works of joint authorship (co-authorship)¹⁶³, compile (compilation) works and collection works¹⁶⁴, derived works¹⁶⁵, audiovisual works¹⁶⁶ and works created in the course of duty obligations.¹⁶⁷

Reproduction

Reproduction is defined as the production of one or more copies of the work or phonogram in any substantive form, including the audio or video recordings. Reproduction is also recording of the work or phonogram for temporary or permanent storing in electronic (including digital), optical or other machine-readable form.¹⁶⁸

Communication of the Work to the Public

156 Art. 1

157 Art. 4

158 Art. 14

159 Art. 15

160 Art. 5

161 Art. 6

162 Art. 8

163 Art. 9

164 Art. 10

165 Art. 11

166 Art. 12

167 Art. 13

168 Art. 4

No specifications are given for the communication of the work to the public.

The Term of Protection

Copyright arises from creation of work and shall have effect throughout the lifetime of the author and for 50 years after his death. This period shall be calculated as from the beginning of the year following that in which the legal act occurred that marks the starting point of the period. The author's private rights (right to claim authorship of his work, his right to be named as such and his right to protection for his reputation) shall be protected without limitation in time.¹⁶⁹

The copyright in an anonymous or pseudonymous work shall have effect for 50 years following the date of the lawful disclosure thereof. If, in the course of that period, the author of the anonymous or pseudonymous work reveals his identity, or if that identity is no longer in doubt, the general provisions apply.¹⁷⁰

Further specifications are given for works of joint authorship shall have effect until the death of the last surviving co-author and for 50 years thereafter.¹⁷¹ The copyright in a work of collective authorship shall have effect for 50 years from the date of publishing, in case it is unpublished from the date of creation.¹⁷²

Copyright in a posthumous work, published at first time during 30 years, shall have effect for 50 years following the first publication of the work.¹⁷³

Related rights for performers, phonogram producers and broadcasting(cable distribution) organizations are protected for 50 years.¹⁷⁴

On the expiration of the term of the copyright in a work, the work shall fall into the public domain. Works that have never enjoyed protection on the territory of the Republic of Azerbaijan shall likewise be deemed fallen into the public domain. Works that have fallen into the public domain may be freely used by any person without payment of remuneration. However, the author's right to claim authorship, his right to be named as such and his right to protection for his reputation as author shall be respected. The works of Azerbaijani creators, deemed fallen into the public domain, could be recognized public domain by authorized body and for its utilization could be established special payments. That royalty shall be transferred into Azerbaijan's state budget.¹⁷⁵

II. Free Use of the Work / Limitations to the Copyright

No definition of 'free use' has been indicated.

Quotation

It is permitted without the author's consent and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing are mentioned to quote, in the original language or in translation, for scientific or for research, polemic, critical or informational purposes and to the extent justified by the intended purpose, extracts from lawfully

169 Art. 25

170 Art. 26 (1)

171 Art. 26 (2)

172 Art. 26 (4)

173 Art. 26 (3)

174 Art. 39 (1)

175 Art. 27

disclosed works, including the reproduction of extracts from newspaper and magazine articles in press reviews.¹⁷⁶

Education

It is permitted, without the author's consent and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing are mentioned to use lawfully disclosed extracts from works in publications, radio or television broadcasts or sound or visual recordings of educational character to the extent justified by the intended purpose.¹⁷⁷

Under the same conditions it is permitted to make a reprographic reproduction in one copy and without gainful intent of isolated articles or succinct works in periodical publications, or of short extracts from lawfully published written works (excepting computer programs), if the reproduction is the work of an educational establishment and the copy obtained is intended for classroom use.¹⁷⁸

Libraries, museums & archives

It is permitted, without the author's consent and without payment of remuneration, but provided that the name of the author whose work is used and the source of the borrowing are mentioned, to make a reprographic reproduction in one copy and without gainful intent of a lawfully published work insofar as the reproduction is the work of a library or archive service and its purpose is to restore or replace lost or damaged copies, or to place copies at the disposal of other libraries that for any reason have lost works from their own collections, if publication of such copy is impossible by same way. One may also reproduce isolated articles or succinct works lawfully published in periodical publications, or of short extracts from lawfully published written works(excepting computer programs), if the reproduction is the work of a library or archive service and it is done to meet the requirements of natural persons who will make use of the copies so obtained for study or research purposes.¹⁷⁹

Closed network display

No specifications are indicated for the display of material within the holdings of the library or archive, e.g. on dedicated terminals.

Art in the public space

The reproduction, broadcasting or communication to the public by cable of architectural works, photographic works and works of fine art permanently located in a public place shall be permissible without the author's consent and without payment of remuneration, except where the presentation of the work constitutes the main feature of the said reproduction, broadcast or communication to the public by cable, if it is used for commercial purposes.¹⁸⁰

Portrait

No specifications for portrait rights have been indicated.

176 Art. 19 (1)

177 Art. 19 (2)

178 Art. 18 1 (c)

179 Art. 18 1 (a, b)

180 Art. 20

III. Databases

A database is defined as an aggregate of data (articles, calculations, facts and other materials), which is according to its selection and arrangement, a result of creative work and which is systematized so as the data could be found and processed by the computer.¹⁸¹

Database creator

No rights are explicitly indicated for the creator of a database.

Conditions for extraction and re-utilization

Any person lawfully in possession of a copy of a computer program or database may, without permission from the author or any other owner of the exclusive right to exploit the work and without paying any additional remuneration, make alterations to the computer program or database, where the purpose thereof is solely to ensure their operation on the user's material, and perform any act in relation to the operation of the computer program or database according to its intended purpose, including any inputting or storing in a memory (that of an individual computer or that of one of the computers in a network), and also correct obvious errors, except where otherwise provided in the contract concluded with the author; make a copy of the computer program or database, provided that the copy is intended solely for archiving and for the replacement of a lawfully acquired copy in the event of the latter having been lost, destroyed or rendered useless.¹⁸²

Term of protection

No separate term of protection for databases has been indicated.

IV. Infringement of Authors' Rights

No definition of 'technological measures' has been indicated. No further specifications with regards to circumvention of technological measures, mediation or rights management data are indicated.

Act

Act on Copyright and Related Rights, 30-06-1994, as amended up to 16-06-2008.

181 Art. 4

182 Art. 24 (1)

Country

Belgium

I. General Provisions

The Scope of the Act

Only the author of a literary or artistic work has the right to control the reproduction of the work. He has the exclusive right to grant permission for adaptation or translation of the work, and for its lending or rental. Only the author has the right to communicate his work to the public and to permit the distribution or sale of his work. The author of such a work also enjoys protection of his moral rights on the work.¹⁸³

The author is the natural person who created the work. Unless proven otherwise, whoever is identifiable by name or acronym on the work, its reproduction or communication to the public, will be seen as the author. The publisher of an anonymous work or work created under pseudonym will be seen as the author thereof.¹⁸⁴

A work protected by copyright is, according to the Copyright Act, “a literary or artistic work, and actually concerns all works which can be original, including applied arts such as design and fashion.”

Reproduction

Only the author of a literary or artistic work has the right to reproduce the work or have it reproduced by any means, in whole or in part, direct or indirect, temporary or permanent.¹⁸⁵ This right is also applicable to performing artists¹⁸⁶ and phonogram and film producers¹⁸⁷.

Communication of the Work to the Public

Only the author has the right to communicate his work to the public and to permit the distribution or sale of his work.¹⁸⁸

This includes according to the Copyright Act the making available of content to the members of the public at a place and at a time individually chosen by them.

The Term of Protection

Author’s rights shall in general run for the life of the author and 70 years after his death.¹⁸⁹

Copyright in an audiovisual work and work with joint authorship will last for 70 years after death of last living author.¹⁹⁰

Works that have been published in different parts or volumes shall be entitled to their separate term of protection of 70 years for each part or volume.¹⁹¹

183 Art. 1 (1,2)

184 Art. 6

185 Art. 1 (1)

186 Art. 35 (1)

187 Art. 39

188 Art. 1 (1)

189 Art. 2 (1)

190 Art. 2 (2)

191 Art. 2 (4)

Rights to an anonymous and pseudonymous work run for 70 years from the time the work was lawfully made public. However if, during the above period, the author discloses his identity or when the pseudonym adopted by the author leaves no doubt as to his identity, the general rules apply.¹⁹²

Neighbouring rights for performing artists¹⁹³, film producers¹⁹⁴ and broadcasting organisations¹⁹⁵ are protected for 50 years after the work is made public..

Anyone who publishes previously unpublished works, whose term of protection has expired, will enjoy copyright protection for 25 years from the moment the works is made public.¹⁹⁶

II. Free Use of the Work / Limitations to the Copyright

There is no definition of ‘free use’. It is a list of exceptions.

The Belgian Copyright Act does not explicitly refer to the three-step-test.

Free use and exceptions to the Copyright Act will in principle be interpreted in with limitation, as the Copyright Act will be interpreted in favour of the author.

Citation

It is allowed to make quotations from works lawfully published, made for purposes of criticism, polemic, review, education, or in scientific works, in accordance with fair practice of the profession and to the extent justified by the purpose to be achieved. Such quotations shall mention the source and the author's name, unless this turns out to be impossible.¹⁹⁷

Education

The creators of an anthology that is aimed at teaching, are allowed not to ask for the authorisation of the authors whose works (or rather extracts of works) are included in such an anthology. This exception (more exactly it is a non-voluntary license) applies only to works after the death of their author. The teaching should not seek economic or commercial advantage, whether directly or indirectly; the choice of the extract, its place and presentation in the anthology should respect the moral rights of the author; and an equitable remuneration should be paid, to be agreed upon by the parties or, by default, to be determined by the court.¹⁹⁸

Free private communication of the work within the framework of school activities is permitted.¹⁹⁹

Acts of reproduction in part or in whole of articles and works of plastic art, and reproductions of short fragments of other works are permitted, when such reproduction is made on paper or any similar medium and by any photographic technique or a method leading to a similar result, for the purpose of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose to be achieved and that does not prejudice the normal exploitation of the work,

192 Art. 2 (3)

193 Art. 38

194 Art. 38

195 Art. 45

196 Art. 2 (6)

197 Art. 21 (1)

198 Art. 21 (2)

199 Art. 22 (1) 3

as long as the source, including the author's name, is indicated, unless this turns out to be impossible.²⁰⁰

Reproduction in part or in whole of articles and works of plastic arts and reproductions of short fragments of other works are permitted when this reproduction is made on other medium than paper or similar, and by any photographic technique or a method leading to a similar result, for the purpose of illustration for teaching or scientific research, to the extent justified by the non-commercial purpose to be achieved and that does not prejudice the normal exploitation of the work, as long as the source, including the author's name, is indicated, unless this turns out to be impossible.²⁰¹

The communication of works is allowed when this communication is made for the purpose of illustration for teaching or scientific research by establishments officially recognised or organised to this end by the public authorities, and to the extent that this communication is justified by the non-commercial purpose to be achieved, takes place in the framework of the normal activities of the establishment, is carried out solely through the closed transmission networks of the establishment and does not prejudice the normal exploitation of the work, and as long as the source, including the author's name, is indicated, unless this turns out to be impossible.²⁰²

Exceptions for education also apply to neighbouring rights.²⁰³

Libraries, museums & archives

Reproduction is allowed but limited to a certain number of copies determined according to and justified by the purpose of the preservation of the cultural and scientific patrimony, made by publicly accessible libraries, by museums, or by archives, which do not pursue any direct or indirect economic or commercial advantage, to the extent it does not conflict with the normal exploitation of the work, and does not unreasonably prejudice the legitimate interests of the author.²⁰⁴

A similar exception is provided for neighbouring rights.²⁰⁵

Closed network display

The communication, including the making available to individuals, is allowed for the purpose of research or private study, of works not subject to purchase or licensing terms, which are contained in collections of publicly-accessible libraries, educational or research establishments, museums or archives, that do not pursue any commercial or economic purpose, whether directly or indirectly, to by dedicated terminals accessible on the premises of such establishments.²⁰⁶ This exception also applies to related rights.²⁰⁷

Art in the public space

200 Art. 22 (1) 4bis

201 Art. 22 (1) 4ter

202 Art. 22 (1) 4quater

203 Art. 46 (3)

204 Art. 22 (1) 8

205 Art. 46 (7)

206 Art. 22 (1) 9

207 Art. 46 (8)

The reproduction and communication of a work exhibited in a place accessible to the public is permitted, when the purpose of the reproduction or communication is not the work itself.²⁰⁸

Portrait

The author or owner of a portrait, or any other person possessing a portrait, does not have the right to reproduce it or to communicate it to the public without the permission of the portrayed, or, within 20 years after his passing, from his right holders.²⁰⁹

III. Databases

A database is defined as a collection of works, data or other independent elements, ordered in a systemic or methodical manner and separately accessible by electronic or other means. Databases who, by choice or ordering of their elements form an intellectual creation of the author, will be as such protected by copyright.²¹⁰

There is a specific law on databases which defines the right holder of the database as the person who invested in the creation of the database (Art. Of 31 August 1998).

Conditions for extraction and re-utilization

The lawful user of a database or of a copy thereof is entitled, without the authorisation of the author and without payment of additional remuneration, to perform any acts which are necessary for the purposes of access to the contents of the database and normal use of its contents.²¹¹

The author of a database, when it is lawfully made public, can not prohibit reproduction for private use; reproduction for educational purposes or scientific research; use for the purposes of public security, provided these actions do not conflict the normal exploitation of the work and do not strive for any commercial benefit.²¹² In case of educational or scientific use, the name of the author and source have to be indicated unless impossible.²¹³

Term of protection

No separate term of protection for the creator of a database has been indicated.

IV. Infringement of Authors' Rights

Protection Against the Circumvention of Technological Measures

A technological measure is defined as any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or performances, which are not authorised by the right holder of any copyright or any right related to copyright. Technological measures is "effective" where the use of a protected work or performance is controlled by the right holders through application of an access control or protection process, such

208 Art. 22 (1) 2

209 Art. 10

210 Art. 20bis

211 Art. 20quater

212 Art. 22bis (1)

213 Art. 22bis (2)

as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.²¹⁴

The act of circumvention of an effective technological measure is prohibited, when the person who circumvents should know or have reason to know that he is doing so and the person who circumvents should know or have reason to know that such a circumvention could facilitate a copyright infringement.²¹⁵

Mediation Procedure

Right holders are required to take adequate voluntary measures, within a reasonable period, to provide beneficiaries of certain exceptions with the means to benefit from those.²¹⁶ The measures to be taken by the right holders are said to be voluntary, but failure to do so gives beneficiaries the opportunity to immediately take recourse to the judiciary.²¹⁷

It is obliged to take safeguarding measures for works or other subject-matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them. The same obligation is imposed upon holders of a sui generis right in a database.²¹⁸

The limitations for accepted right information removal are the making of an anthology; reprography; analogue and digital reproductions for the purpose of illustration for teaching or scientific research; exceptions for the preservation of cultural and scientific patrimony; ephemeral recordings made by broadcasters and the exception for the benefit of disabled people.²¹⁹

The Protection of the Rights Management Data

The expression rights-management information is defined as any information provided by right holders which identifies the work or other subject-matter, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.²²⁰

The relevant provisions sanctions any person who knowingly performs without authority any of the following acts: (a) the removal or alteration of any electronic rights management information; (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter from which electronic rights-management information has been removed or altered without authority, if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright.²²¹

214 Art. 79bis (1) 4,5

215 Art. 79bis (1) 1

216 Art. 79bis (2)

217 Art. 87bis

218 Art. 79bis (3)

219 Art. 79bis

220 Art. 79ter

221 Art. 79ter

Country

Bulgaria

Act

Law on Copyright and Neighbouring Rights of Bulgaria, No. 56 (1993), as amended through No. 32 (2009)

I. General Provisions

The Scope of the Act

The Act governs the relations, related to the creation and distribution of works of literature, art and science.²²²

Copyright on works of literature, art and science shall arise for the author upon creation of the work.²²³

The Act further defines the various types of work and what can be understood as a ‘work’.²²⁴

The author shall be the natural person whose creative endeavours have resulted in the creation of a work. Other natural or legal persons may be owners of copyright only where this Law so provides.²²⁵

Further specifications are indicated for presumption of authorship²²⁶, anonymous works or use of pseudonym²²⁷, works with joint authorship²²⁸ and works created under employment²²⁹.

Reproduction

Reproduction is defined as directly or indirectly duplicating the work or part thereof in one or more copies, in any manner and in any form whether permanent or temporary, including the digital storage of the work on an electronic medium.²³⁰

Communication of the Work to the Public

No specifications for communication the work to the public have been indicated.

The Term of Protection

Author’s rights shall in general run for the life of the author and 70 years after his death.²³¹

In case of an unknown author or use of pseudonym, the term of protection is 70 years from the date of the making available of the work to the public. If the identity of the author becomes known

222 Art. 1

223 Art. 2

224 Art. 3

225 Art. 5

226 Art. 6

227 Art. 7

228 Art. 8

229 Art. 41

230 Additional provisions, § 2 (3)

231 Art. 27

during this term or if the pseudonym does not cast suspicion on the author's identity, the term of protection is 70 years after the author's death.²³²

After the expiration of the term of copyright protection, the works may be used freely, respecting the other provisions in the Copyright Act. The State (Ministry of Culture) shall monitor the observance of these rights and may, exceptionally, permit changes to be made in such works.²³³

Any person who makes a work available to the public after the term of copyright protection has expired shall enjoy economic rights to the work if it has not been published previously. That right shall be protected for 25 years as from January 1 of the year following that in which the work is made available to the public.²³⁴

Neighbouring rights for performers²³⁵, producers of phonograms²³⁶, film producers²³⁷ and radio and television organisations²³⁸ are protected for 50 years.

II. Free Use of the Work / Limitations to the Copyright

No definition of 'free use' has been indicated.

The Bulgarian Copyright Act includes the three-step-test: free use of works shall be permissible only in the cases specified in this Law, provided that it does not conflict with the normal exploitation of the work and does not prejudice the legitimate interests of the copyright holder.²³⁹

There is no definite interpretation for the practice of such cases under Bulgarian jurisdiction, in either a limited or broad sense.

Quotation

It is permitted, without the consent of the copyright holder and without payment of compensation, to use quotations from other persons' already disclosed works when criticizing or reviewing, provided the source and the name of the author are cited unless this turns out to be impossible. The quotation should be compatible with the usual practice and its extent should not exceed the one justified by the purpose.²⁴⁰

Education

It is permitted, without the consent of the copyright holder and without payment of compensation, to use parts of published works or of a limited number of works in other works to the extent justified by the purposes of analysis, comments or scientific research. Such use shall be permissible only for scientific and educational purposes, provided the source and the name of the author are cited unless this turns out to be impossible.²⁴¹

232 Art. 28

233 Art. 34

234 Art. 34a

235 Art. 82

236 Art. 89

237 Art. 90b

238 Art. 92

239 Art. 23

240 Art. 24 (2)

241 Art. 24 (3)

It is also permitted, without the consent of the copyright holder and without payment of compensation, to publicly present and perform published works in schools and other educational establishments, provided that there are no pecuniary revenues and no compensation is paid to the participants in the preparation and carrying out of the public presentation or performance.²⁴²

Libraries, museums & archives

It is permitted, without the consent of the copyright holder and without payment of compensation, to reproduce already published works by public libraries, schools or other educational establishments, museums and archives with educational or conservation purposes, provided this use will not serve commercial purposes.²⁴³

Closed network display

No specifications on display of work on the premises of libraries or the like, e.g. through dedicated terminals, have been indicated.

Art in the public space

It is permitted, without the consent of the copyright holder and without payment of compensation, to use works permanently exhibited on streets, squares and other public places, excluding mechanical contact copying, as well as their broadcasting by wireless means or transmission by cable or other technical means, if done for the purposes of information or another non-commercial purpose.²⁴⁴

Portrait

The copyright in a work of fine art or photography, constituting the portrait of a person other than the author, shall belong to the author of the work. The author may negotiate terms for the use of such works with the person who appears in the portrait.²⁴⁵

III. Databases

A database is defined as a collection of independent works, data or other materials which are arranged in a systematic or methodical way and individually accessible by electronic or other means. Computer programs used in the making or operation of databases, the recordings of a separate audiovisual work, work of literature or musical work, as well as the compilation of recordings of musical performances on CD shall not be deemed databases within the meaning of the Copyright Act.²⁴⁶

Database creator

Right holders of databases are those who create them. A database creator is the person or legal entity that has taken the initiative and run the risk of investing in the compilation, verification or

242 Art. 24 (8)

243 Art. 24 (9)

244 Art. 24 (7)

245 Art. 13

246 Additional provisions, § 2, 13

use of the contents of a database, provided such investment is substantial, evaluated qualitatively or quantitatively.²⁴⁷

The database creator shall be entitled to prohibit the extraction of the contents of the database or a substantial part thereof to another medium, by permanent or temporary transfer, by any means or in any form. He may also prohibit the re-utilization of the database contents or a substantial part thereof by making it available to the public in any form, including the distribution of copies, their renting or digital transmission.

The database creator shall be entitled to prohibit these acts with regard to insubstantial parts of its contents, in case these acts are repeated and systematic in a manner that conflicts with the normal exploitation of the database or may prejudice the legitimate interests of its creator.²⁴⁸

Conditions for extraction and re-utilization

A person who has lawfully acquired access to a database or a copy thereof can freely undertake actions listed in the article, as well as actions in relation to the results possibly got by the translation, revision, processing or any other alteration, which he has done to it, when this is necessary for the access to the contents of the database and its normal use. In case a lawful user has the right to extract and utilize only part of the database, this provision shall apply only in respect to that part.²⁴⁹

Where a database is made available to the public in whatever manner, the creator may not prevent the extraction or re-utilization of an insubstantial part of its contents for whatever purposes by the person who has lawfully acquired access to it. In case a lawful user has the right to extract and utilize only part of the database, this provision shall apply only in respect to that part.²⁵⁰

A lawful user of a database which is made available to the public in whatever manner may, without the authorization of its creator, extract or re-utilize according to Art. 93 (c) a substantial part of its contents in case of extraction for private use of the contents of a non-digital database; in case of extraction for the purposes of illustration for teaching or scientific research to an extent justified by the purpose, provided the source is indicated; in case of extraction or re-utilization for the purposes of national security or in an administrative or judicial procedure.²⁵¹

Term of protection

The rights referred to in the paragraph 'Database creator' shall last for 15 years. The term shall run from the first of January following the year during which the database has been completed. In case a database has been made available to the public before the expiry of the period provided for above, the term of protection shall expire after 15 years from the first of January of the year following the date when the database was first made available to the public. Any further substantial investment in a database resulting in a substantial change in its contents, shall qualify the database part resulting from that investment for its own term of protection.²⁵²

IV. Infringement of Authors' Rights

247 Art. 93b

248 Art. 93c

249 Art. 93f(1)

250 Art. 93f(2)

251 Art. 93g

252 Art. 93h

Protection Against the Circumvention of Technological Measures

A person who intentionally removes, damages, destroys, disrupts or in any other manner circumvents, without having the right to do so, technological measures in place to protect rights protected by this Law is punished accordingly if he knew or has reason to believe that these measures serve such a purpose.²⁵³

Technological measures are defined as any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts in respect of works or other subject-matter protected by this Act which are not authorized by the right holder, if through these measures the use of protected subject matter is controlled by the right holder through an access code, blurring or other alternation of the object or a mechanism for controlling the copy.²⁵⁴

The Copyright Act does not foresee exceptions for the benefit of libraries, archives and museums: the use of works as specified in the paragraph 'Free use' may not be carried out in a manner accompanied by removal, damage, destruction or disruption of technical means of protection without the consent of the copyright holder.²⁵⁵

However users, who want to benefit from some of the provisions of Art 24 and 25 in connection to the free use as specified in the paragraph but are hindered by technological measures, can ask the right holder to grant them the respective access to the level justified by the purpose.²⁵⁶

Mediation Procedure

The possibility of installing a procedure with a mediation board (e.g. by libraries, archives and the like) is not indicated in the Act.

The Protection of the Rights Management Data

Rights management data is defined as information allowing the object of copyright protection or a neighbouring right, the right holder, as well as information about the use of such an object to be identified, as well as any number or code, leading to such an information, under the condition that any of those elements of information is present on the copies of the object or is shown at its making public.²⁵⁷

Any person who, without having the right to do so and knowing or having reason to believe that his action will cause, allow, aid or conceal an infringement on a right protected by this law, removes or alters an information in an electronic form about the rights management on a copyrighted object or one protected by a neighbouring right.²⁵⁸

253 Art. 97(6)

254 Additional provisions, § 2, 14

255 Art. 25a (1)

256 Art. 25a (2)

257 Art. 97 (9)

258 Art. 97 (8)

Country

Cyprus

Act

The Copyright and Neighbouring Rights Laws 1976 to 2007, hereinafter ‘Copyright Law’, namely: Copyright Law: N 59/76, 63/77, 18(I)/93, 54(I)/99, 12(I)/01, 128(I)/04, 123(I)/06 and 181(I)/07

I. General Provisions

The Scope of the Act

Copyright in a scientific, literary (including computer software), musical, artistic work (including photographs) or film or database shall, inter alia, consist of the exclusive right to control the reproduction in any form, sale, rental, distribution, lending, advertising, exhibiting in public, the communication to the public, the broadcasting, the translation, adaptation and any other arrangement, of the whole work or a substantial part thereof.²⁵⁹

The Copyright Law provides a list of types of work in which copyright shall subsist.²⁶⁰

Copyright subsisting by virtue of this Law shall vest initially in the author²⁶¹. In the case of an anonymous or pseudonymous work, the publisher whose name is indicated on the work as such shall be deemed to be, unless the contrary is proved, the lawful representative of the anonymous or pseudonymous author and shall be entitled to exercise and protect the rights belonging to the author under this Law.²⁶²

Further specifications are indicated for the broadcasting of works incorporated in a cinematograph film²⁶³, the nature of copyright in sound recording²⁶⁴ and the nature of copyright in broadcasts²⁶⁵.

Reproduction

Reproduction is defined as the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of scientific works, literary works, works of music, artistic works, films or audio recordings, databases or broadcast.²⁶⁶

A copy is defined as that which may be reproduced directly or indirectly in written form, sound recording, cinematograph film, recording by electronic or other means or in any other material form, however so that an object shall not be taken to be a copy of an architectural work unless the object is a building or model.²⁶⁷

Communication of the Work to the Public

Copyright includes the exclusive right of control over the communication to the public of works, by wire or wireless means and the right of making available to the public of works in such a way that

259 Section 7 (1)

260 Section 3 (1)

261 Section 11(1)

262 Section 11 (1,3)

263 Section 8

264 Section 9

265 Section 10

266 Section 2. (a)

267 Section 2 (1)

members of the public may access these works from a place and at a time individually chosen by them.²⁶⁸

The Term of Protection

Normally: 70 years from the year of the death of the author or 70 years from publication. In cases of unpublished works 25 years from publication and 15 years for non original databases.

II. Free Use of the Work / Limitations to the Copyright

The notion of ‘free use’ is not defined. Nevertheless, there are extensive provisions²⁶⁹ which define what is NOT covered by copyright and one can define free use or fair use with or without remuneration.

Cyprus has ratified the Berne Convention,²⁷⁰ which in accordance with the Cyprus Constitution²⁷¹ has force superior over any domestic legislation.

There is very little case law on the matter of free use. Cyprus is a common law Country and English case law will have a persuasive effect.

Quotation

It is permitted to quote passages from published works if they are compatible with fair practice and their extent does not exceed that justified by the purpose, including extracts from newspaper articles and magazines in the form of press summaries, provided that mention is made of the source and of the name of the author which appears on the work thus used.²⁷² It is also allowed to read or recitate in public or in a broadcast by one person, any reasonable extract from a published literary work if accompanied by a sufficient acknowledgement.²⁷³

Education

It is allowed to use works by way of fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, on condition that, if such use is made in public, it shall be accompanied by an acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast.²⁷⁴

It is also permitted to include a work in a broadcast, communication to the public, sound recording, cinematograph film or collection of works, if such inclusion is made by way of illustration for teaching purposes and is compatible with fair practice and provided that mention is made of the source and of the name of the author which appears on the work thus used.²⁷⁵

It is also allowed to use works by such public libraries, non-commercial collection and documentation centres and scientific institutions as may be prescribed, where such use is in the

268 Section 7(1) (a) (vi)

269 Section 7(2)

270 Ratification Law 86(79)

271 Art 169 (3)

272 Section 7 (1) (f)

273 Section 7 (1) (i)

274 Section 7 (1) (a)

275 Section 7 (1) (e)

public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used.²⁷⁶

Libraries, museums & archives

It is permitted to use works by such public libraries, non-commercial collection and documentation centres and scientific institutions as may be prescribed, where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used.²⁷⁷

Closed network display

No specifications are indicated for the display of material within the holdings of the library or archive, e.g. on dedicated terminals.

Art in the public space

It is permitted to include in a cinematograph film or broadcast, any artistic work situated in a place where it may be viewed by the public; and to reproduce and distribute copies of any artistic work permanently situated in a place where it may be viewed by the public.²⁷⁸

Portrait

No specifications for portrait rights have been indicated.

III. Databases

A database is a collection of works, data or other independent items arranged in a systematic or methodical manner and individually accessible by electronic or other means.²⁷⁹

Database creator

The definition of author²⁸⁰ contains the creator of the database. There are specific provisions for the nature of copyright for databases²⁸¹ which provide the author with full right of copying under subsection 2 or a special right under subsection 3, depending on whether it is an original work. For a data base that fulfils the conditions of originality the author can control the temporary or permanent reproduction of the database in any form and of any part²⁸²; the translation, adaptation or arrangement or other alteration of the database²⁸³; the distribution of the database or any copies to the public; any announcement, exhibition or presentation of the database to the public²⁸⁴. There are also exceptions for fair use which includes private use²⁸⁵ and makes reference to unduly affecting

276 Section 7 (1) (j)

277 Section 7 (1) (j)

278 Section 7 (1) (b,c)

279 Section 2(1)

280 Section 2(1)

281 Section 7C2a(i)

282 Section 7C2a(ii)

283 Section 7C2a(iii)

284 Section 7C2a(iv)

285 Section 7C2b(i)

unduly the rights of the author or to be in conflict with the usual exploitation of databases as defined by the Berne Convention²⁸⁶. In addition the author of a data base, not otherwise covered by copyright, has the right to control extraction or re-utilization of the whole or substantial part of the content in terms of quality or quantity provided that the formation, verification or presentation of the content represents a substantial contribution in terms of quality or quantity.²⁸⁷

Original databases 70 years from death of author.²⁸⁸

Non original databases 15 years from completion.²⁸⁹

Any new contribution to a database, substantial in terms of quality or quantity, consisting of the supplementing, deletion or alterations shall result in a right to be protected itself in terms of duration.²⁹⁰

Conditions for extraction and re-utilization

It is allowed, for a legitimate user of the database, to extract or reutilize qualitatively or quantitatively an insubstantial segment of the content²⁹¹ or to extract or reutilize qualitatively or quantitatively any segment of the content as long as it is for private use for educational or research purposes²⁹².

A legitimate user of a database available to the public is not entitled to do acts which would be unjustifiably contrary to the legal rights of the author or to repetitively and systematically extract or reutilize qualitatively or quantitatively substantial segments of the content²⁹³

Interestingly, lending to the public does not constitute an act of extraction or re-utilization²⁹⁴

Term of protection

No specifications have been indicated.

IV. Infringement of Authors' Rights

No definition of 'technological measures' has been indicated in the Laws of 1993. Regulation on the circumvention of technological measures has been inserted in the amendment of 2004.

Protection Against the Circumvention of Technological Measures

Effective technical measures are defined as any technology, device or component which, in the normal course of its operation, is designed to prevent or restrict acts in relation to protected objects, not authorised by the author.²⁹⁵

286 Section 7C2(c)

287 Section 7C3(a)

288 Section 5(1)(i)

289 Section 5(1)(vi)

290 Section 5(1)(vii)(b)

291 Section 7C3(b)(ii)

292 Section 7C3(c)

293 Section 7C3(c)

294 Section 7C3(d)

295 Section 2(1)



It is an infringement to circumvent technological measures for commercial purposes²⁹⁶ and thus if the purpose is not commercial and in line with the fair use exception²⁹⁷ it will be allowed.

One should also consider the protection of software programmes²⁹⁸ and the neutralisation of technical systems of protection²⁹⁹ for the same.

No further specifications with regards circumvention of technological measures, mediation (limitations on technological protection in favour of museums, archives, ...) or rights management data are indicated.

Mediation Procedure

No such procedure available. There is nevertheless the Competent Authority that is empowered to determine the fee for the license of the work³⁰⁰ similar to a Copyright Tribunal.

The Protection of the Rights Management Data

Rights management data is defined as information which identify the work, its author, any owner of rights in relation to the work, or information for terms and conditions for its use or any numbers or codes which represent the above when these rights management data are attached on a copy or appear when transmitted to the public.³⁰¹

Infringement consists of allowing, without the consent of the author, to cause, enable, facilitate or conceal the infringement of copyright by removing or altering any electronic rights management information or distributing, importing for distribution, broadcasting or transmitting to the public works or copies of the work whose rights management data has been removed or altered³⁰²

296 Section 14B

297 Section 7(2)(j)

298 Section 7B

299 Section 14A

300 Section 15

301 Section 7E(2)

302 Section 7E(1)

Country

Czech Republic

Act

Act No. 121/2000 on Copyright and Rights Related to Copyright and on Amendment to Certain Acts (the Copyright Act), as amended by Act No. 81/2005, Act No. 61/2006, Act No. 186/2006, , Act No. 216/2006 and Act. No. 168/2008.

I. General Provisions

The Scope of the Act

This Act implements the relevant legislation of the European Communities and regulates the right of an author, the natural person who created the work³⁰³, to his work.³⁰⁴

The subject matter of copyright shall be a literary work or any other work of art or a scientific work, including databases and computer programs.

Further specifications are given for works with joint authorship³⁰⁵, a collection of works³⁰⁶, anonymous works or use of pseudonym³⁰⁷.

The Copyright Act also provides for neighbouring rights such as for performers and performances³⁰⁸, phonogram producers³⁰⁹, producers of audiovisual fixations³¹⁰ and radio and television broadcasters.

Reproduction

Reproduction means the making of temporary or permanent, direct or indirect reproductions of the work or any part thereof by whatever means and in whatever form.³¹¹ A work may be reproduced in the form of a printed, photographic, audio, visual or audiovisual reproduction, in the form of erecting a work of architecture or in the form of any other three-dimensional reproduction, or in an electronic form, both analogue and digital.³¹²

Communication of the Work to the Public

The communication of a work to the public is defined as making the work available in an intangible form, live o from a recording, by wire or wireless means.³¹³ It also covers making the work available in such a way that members of the public may access it from a place and at a time

303 Art. 5

304 Art. 1

305 Art. 8

306 Art. 5

307 Art. 6, 7

308 Art. 73

309 Art. 77

310 Art. 81

311 Art. 13 (1)

312 Art. 13 (2)

313 Art. 18 (1)

individually chosen by them, especially by using a computer network or similar network.³¹⁴ It is the right of the author to communicate the work.³¹⁵

The Term of Protection

Author's economic rights shall in general run for the life of the author and 70 years after his death.³¹⁶

Rights to an anonymous and pseudonymous work run for 70 years from the time the work was lawfully made public.³¹⁷

Neighbouring rights for performers and performances run for 50 years from the creation of the performance or from the time when fixation of such a performance was made lawfully public.³¹⁸

The phonogram producers' rights run for 50 years from the making of the phonogram or from making such a phonogram lawfully public or lawfully communicated to the public.³¹⁹ The rights of producers of audiovisual fixations run for 50 years from its first fixation or from making this fixation lawfully public.³²⁰ The rights of radio and television broadcasters run for 50 years from the first broadcast.³²¹

A work for which the period of duration of economic rights has expired may be utilized by anybody without any further provision.³²² Whoever first makes public an unpublished work for which the period of duration of economic rights has already expired, shall be entitled to exclusive economic rights to the work. This right shall run for 25 years from making the work public.³²³

II. Free Use of the Work / Limitations to the Copyright

Free use is stated in Art. 30 sub. 1: "Not considered as exploitation of a work under this Act shall be its use for personal needs by a natural person without seeking to achieve direct or indirect economic benefit, unless otherwise specified herein"

Art. 30 sub. 2. Copyright shall not be infringed by whoever for his own personal use makes a recording or imitation of work.

The Copyright Act of the Czech Republic includes the three-step-test: copyright exceptions and limitations shall only be applied in certain special cases specified in the Act, and only if the use of a work in such special cases shall not conflict with the normal exploitation of the work and shall not unreasonably prejudice the legitimate interests of the author.³²⁴

There are not many judicial decisions available on limited or broad interpretation of cases of free use in jurisdiction.

314 Art. 18 (2)

315 Art. 18 (4)

316 Art. 27

317 Art. 27 (3)

318 Art. 73

319 Art. 77

320 Art. 81

321 Art. 85

322 Art. 28 (1)

323 Art. 28 (2,3)

324 Art. 29 (1)

Citation

The use of excerpts from a published work of other author by whoever in his own work to a justified extent is permitted. It is also permitted to use excerpts from a work or small works in their entirety for the purposes of critique or review and use a work while teaching or during scientific research.. If possible, the name of the author and the title of the work have to be indicated.³²⁵

Education

Provided that the described actions are undertaken in a non-commercial manner, it is allowed to use a work and phnograms, audiovisual fixations or broadcasting during school performances. It is also allowed to use a work for teaching purposes or to meet own internal needs for a work created by a pupil or student as a part of his school or educational assignments ensuing from his legal relationship to his school or the school-related or educational establishment (school work).³²⁶

Libraries, museums & archives

Libraries, archives and museums (and also galleries, schools, universities and other non-profit school-related and educational establishments) may make a reproduction of a work for which constitutes a part of its collections and the use thereof is not subject to purchase or licensing terms. This can only happen in relation to further specifications (see ‘Closed network display’).³²⁷

Libraries, archives and museums may make a reproduction of a work for their own archiving and conservation purposes, if such a reproduction is non-commercial. The same conditions apply if the institution makes a reproduction of a work whose reproduction has been damaged or lost, provided that it is possible to verify with reasonable effort that it is not being offered for sale, or a print reproduction of a minor part of the work, if such part has been damaged or lost.³²⁸

Closed network display

Libraries, archives and museums may make a work available to members of the public (including the making of a reproduction needed for such availability) by dedicated terminals located on its premises. This kind of access may only serve the purposes of research or private study of such members of the public, provided that such members of the public are prevented from making reproductions of the work.³²⁹

Art in the public space

It is allowed to record or express by drawing, painting, graphic art, photography or film a work permanently located on a square, in a street, in a park, on a public route or in any other public place. It is also allowed to further use a work expressed in that manner, rendered or recorded. It is not possible to make a reproduction and distribution of a work in the form of a three-dimensional reproduction.

If possible, the name of the author (unless the work is an anonymous work) or the name of the person under whose name the work is being introduced in public, the title of the work and its location have to be indicated.³³⁰

325 Art. 31 (1)

326 Art. 35 (2,3)

327 Art. 37 (1)

328 Art. 37 (1)

329 Art. 37 (1)

330 Art. 33 (1)

Portrait

Copyright is not infringed by anybody who makes a reproduction of a photographic work that is his own portrait and that he commissioned to be made for a consideration. A reproduction made in this way may also be used by the portrayed person for non-commercial purposes, unless such use is forbidden.³³¹

III. Database

A database is defined a collection of independent works, data, or other items arranged in a systematic or methodical manner and individually accessible by electronic or other means, irrespective of the form of the expression thereof.³³²

Database creator

The creator of the database is the natural or legal person who, on his own responsibility, has compiled the database, or on his/hers impulse the database has been compiled by another person.³³³

The creator of the database shall have the right to extraction (the permanent or temporary transfer of all the content of a database or a substantial part thereof to another medium by whatever means or in whatever form)³³⁴ or re-utilization (any form of making available to the public all the content of a database or a substantial part thereof by the distribution of copies, by rental or by the on-line or any other forms of transmission)³³⁵ of the entire content of the database or of its part substantial in terms of quality or quantity, and the right to grant to another person the authorisation to execute such a right.³³⁶

These rights pertain to the creator of the database, provided that the formation, verification or presentation of the content of the database represents a substantial contribution in terms of quality or quantity, irrespective of whether the database or the contents thereof are subject to copyright protection or any other type of protection.³³⁷

Conditions for extraction and re-utilization

It is allowed to extract or re-utilize qualitatively or quantitatively insubstantial segments of the content of the database or any part thereof, doing so for whatever purpose, on condition that the user uses the database in a normal and appropriate manner, not systematically or repeatedly, and without damaging the legitimate interests of the creator of the database, and that he shall not cause damage to the author or the right holder of rights related to the copyright to the works or other protected items contained in the database.³³⁸

331 Art. 38b

332 Art. 88

333 Art. 89

334 Art. 90 (2)

335 Art. 90 (3)

336 Art. 90 (1)

337 Art. 88a (1)

338 Art. 91

Users may also extract or re-utilize a substantial part of the content of the database for scientific or educational purposes, if he indicates the source, within the scope justified by the pursued non-gainful purpose.³³⁹

Term of protection

The right of the creator of the database shall run for 15 years from the making of the database.³⁴⁰ Any new contribution to a database, substantial in terms of quality or quantity, consisting in the supplementing, abbreviating or otherwise adjusting the database, shall result in a new run of the duration of protection.³⁴¹

IV. Infringement of Authors' Rights

Protection Against the Circumvention of Technological Measures

Effective technical measures are defined as any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, which are not authorised by the author, if the author can control the use of a protected work through application of an access control or protection process, such as encryption, scrambling or other transformation of the work, or a copy control mechanism.³⁴²

Copyright is infringed by anybody who circumvents effective technical measures that are in place to protect rights.³⁴³

Libraries, archives and museums may ask for the removal of technological measures: an author who used technical measures in respect of his work shall make his work available to lawful users to the extent necessary to fulfil the purpose of the stated exploitation of the work.³⁴⁴

Mediation Procedure

No specifications for a mediation procedure have been indicated.

The Protection of the Rights Management Data

Rights-management information is defined as any information provided by the author to identify the work, the author or any other right holder, or information concerning the ways and conditions of using the work, and any numbers or codes that represent such information. The same applies to the information which is associated with a reproduction of the work or appears in connection with the communication of the work to the public.³⁴⁵

It is not allowed to, without the author's consent, induce, enable, facilitate or conceal the infringement of copyright by removing or altering any electronic rights-management information; or distributing, importing or receiving for distribution purposes, broadcasting or communicating to

339 Art. 92

340 Art. 93

341 Art. 88a (2)

342 Art. 43 (3)

343 Art. 43 (1)

344 Art. 43 (4)

345 Art. 44 (2)



the public a work whose electronic rights-management information was without authority removed or altered.³⁴⁶

³⁴⁶ Art. 44 (1)

Country

Estonia

Act

Copyright Act of Estonia, RT 1992, 49, 615 (1992) as amended through RT I 2008, 59, 330 (2008).

I. General Provisions

The Scope of the Act

The Copyright Act provides among other for the protection of a specific right (copyright) of authors of literary, artistic and scientific works for the results of their creative activity.³⁴⁷ “Works” means any original results in the literary, artistic or scientific domain which are expressed in an objective form and can be perceived and reproduced in this form either directly or by means of technical devices. A work is original if it is the author’s own intellectual creation.³⁴⁸ The author of a work is the natural person or persons who created the work.³⁴⁹ Further specifications are given for works with joint authorship³⁵⁰, collective works³⁵¹ and in case of presumption of authorship³⁵².

Reproduction

Reproduction is defined as making one or several temporary or permanent copies of the work or a part thereof directly or indirectly in any form or by any means.³⁵³

Communication of the Work to the Public

The author has the exclusive right to authorise or prohibit the communication of the work by radio, television or satellite, and retransmission thereof by cable network, or direction of the work to the public by other technical devices. He may also authorise or prohibit the making available to the public in such a way that persons may access the work from a place and at a time individually chosen by them.³⁵⁴

The Term of Protection

Author’s rights shall in general run for the life of the author and 70 years after his death.³⁵⁵

In case of an unknown author, the term of protection is 70 years from 1st day of the year following the date of the making available of the work to the public.³⁵⁶

Neighbouring rights for performers, producers of phonograms, broadcasting organisations and producers of the first fixation of a film are protected for 50 years.³⁵⁷

347 Art. 1 (2)

348 Art. 4 (2)

349 Art. 28 (2)

350 Art. 30

351 Art. 31

352 Art. 29

353 Art. 13 (1)

354 Art. 13 (2)

355 Art. 38 (1)

356 Art. 40

357 Art. 74

Works whose term of protection of copyright has expired may be freely used by all persons, but the use of the title (name) of a work by another author for a similar work when the term of protection of copyright has expired is not permitted if such use may result in identification of authors which would mislead the public.³⁵⁸

II. Free Use of the Work / Limitations to the Copyright

Free use is defined as the use of a work without the authorisation of its author and without payment of remuneration.³⁵⁹ The Estonian Copyright Act includes the three-step-test (“Provided that this does not conflict with a normal exploitation of the work or does not unreasonably prejudice the legitimate interests of the author, it is permitted to use a work without the authorisation of its author and without payment of remuneration only in the cases directly prescribed in the Act”).³⁶⁰ The Act contains a list of limitations for free reproduction of works for scientific, educational, informational, judicial and administrative purposes, if reference is made to the author of the work, the title of the work and the source publication.³⁶¹

The cases of free use are interpreted in a broad sense in present jurisdiction.

Quotation

It is permitted to make summaries of and quotations from works which have already been lawfully made available to the public, provided that the idea of the work as a whole which is being summarised or quoted is conveyed correctly, and their extent does not exceed that justified by the purpose. The author’s name, the title and the source of the work have to be indicated.³⁶²

Education

It is permitted if mention is made of the name of the author of the work, the title of the work and the source publication, to use a lawfully published work or parts thereof for the purpose of illustration for teaching or scientific research to the extent justified by the purpose if all use is non-commercial. Reprographic reproduction of articles lawfully published in newspapers, journals or other periodicals and of excerpts from published works is also permitted for the sole purpose of teaching or scientific research in educational and research institutions whose operation is a non-commercial one.³⁶³

Libraries, museums & archives

Libraries, archives and museums have the right to freely reproduce works or parts thereof which belong to their funds or collections on orders from natural persons for private use. The activities of the institutions must be non-commercial.³⁶⁴

It is allowed to make a single copy of a work included in collection of archives, a library or a museum in order to make a copy to ensure the preservation of the work in the likelihood of danger. There is a likelihood of danger if a work or a copy thereof is the single one in a library, archives or

358 Art. 45, Art. 44 (2)

359 Art. 17

360 Art. 17

361 Art. 19

362 Art. 19 (1)

363 Art. 19 (2, 3)

364 Art. 20 (3)

a museum and the termination of its lending or display is contrary to the functions under the articles of association of the library, archives or museum. Under the same conditions it is allowed to replace a work or a copy thereof which has been lost, destroyed or rendered unusable; to replace a work or a copy thereof which belonged to the permanent collection of another library, archives or museum if the work is lost, destroyed or rendered unusable; to digitize a collection for the purposes of preservation. *It is allowed to use a work included in the collection for the purposes of an exhibition or the promotion of the collection to the extent justified by the purpose.* All these reproductions are only permitted when acquisition of another copy of the work is impossible. In addition, the reproduction should serve only non-commercial purposes.³⁶⁵

Closed network display

Public libraries, public museums and archives may make the works or objects of related rights in their collections available through special equipment located on the premises of the institution on orders from natural persons for study or scientific purposes.³⁶⁶

Art in the public space

It is permitted, without the authorisation of the author and without payment of remuneration, to reproduce works of architecture, works of visual art, works of applied art or photographic works which are permanently located in places open to the public by any means except for mechanical contact copying, and to communicate such reproductions of works to the public except if the work is the main subject of the reproduction and it is intended to be used for direct commercial purposes. If the work specified in this section carries the name of its author, it shall be indicated in communicating the reproduction to the public.³⁶⁷

Portrait

No specifications for portrait rights have been indicated.

III. Database

A database is defined as a collection of works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means. The definition of database does not cover computer programs used in the making or operation thereof.³⁶⁸

Database creator

The creator of a database is a person who has made a substantial investment, evaluated qualitatively or quantitatively, in the collecting, obtaining, verification, arranging or presentation of data which constitutes the contents of the database.³⁶⁹

The making of extractions (the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form) of, or re-utilization (any form of making available to the public all or a substantial part of the contents of a database by the

365 Art. 21

366 Art. 20 (4)

367 Art. 20.1

368 Art. 75.2

369 Art 75.3 (1)

distribution of copies, by renting, by on-line or other forms of transmission) of the database or a substantial part thereof, is only permitted with the authorisation of the creator of a database.³⁷⁰

Conditions for extraction and re-utilization

The lawful user of a database or of a copy thereof is entitled, without the authorisation of the author and without payment of additional remuneration, to perform any acts which are necessary for the purposes of access to the contents of the database and normal use of its contents.³⁷¹

A lawful user of a database which is lawfully made available to the public in whatever manner may extract or re-utilize a substantial part of the database in the case of extraction (the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form) for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved.³⁷²

Term of protection

The rights specified above in the paragraph ‘Database creator’ run for 15 years. In case of a substantial change to the contents of a database (successive additions, deletions and alterations), which would result in the database being considered to be a substantial investment, the rights of the creator of the changed database shall expire in 15 years from the making of corresponding changes.³⁷³

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Technological measures are defined as any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts related to a work, an object of related rights or a database and for which the holder of copyright, the holder of related rights or the creator of the database has not granted the authorisation.³⁷⁴ Authors and holders of related rights may, in order to protect their rights, add technological measures to a work or object of related rights.³⁷⁵ Circumvention of technological measures is prohibited by criminal law.

Mediation procedure

Right holders are obliged to adjust measures in order to allow “entitled persons” to freely use the work etc. to the extent necessary for the use as prescribed in the relevant provisions dealing with limitations.³⁷⁶

‘Entitled persons’ are indicated in Free of Use chapter, including libraries, archives, and museums. Failure to comply with a reasonable request of entitled persons gives beneficiaries an opportunity to refer the matter to a specific procedure before the Copyright Committee.³⁷⁷

370 Art. 75.4 (2)

371 Art. 25.1

372 Art. 75.6 (2)

373 Art. 75.7

374 Art. 80 (2,3)

375 Art. 80

376 Art. 80



The Protection of the Rights Management Data

Authors and holders of related rights may add information on the exercise of rights to published works or objects of related rights. This kind of information is defined as any information presented to the right holders that defines the work, the object of related rights or database or the terms of their use and identifies the author, the holder of related rights or the creator of a database.³⁷⁸

The removal or alteration of information on exercise of rights as well distribution, communication, direction at the public or making available to the public of works, objects of related rights or databases from which information concerning the exercise of rights has been removed without authorisation or the information has been altered, a punishable offence.³⁷⁹

377 Art. 87

378 Art. 80 (4)

379 Art. 81 (4)

Country

Finland

Act

Copyright Act, Law 14.10.2005/821, amending the Copyright Act (8.7.1961/404).

I. General Provisions

The Scope of the Act

A person who has created a literary or artistic work shall have copyright therein, whether it be a fictional or descriptive representation in writing or speech, a musical or dramatic work, a cinematographic work, a photographic work or other work of fine art, a product of architecture, artistic handicraft, industrial art, or expressed in some other manner.³⁸⁰

Further specifications are given for works with joint authorship,³⁸¹ compilation work,³⁸² adaptation and translation,³⁸³ and anonymous works or use of pseudonym.³⁸⁴

Maps and other descriptive drawings or graphically or three-dimensionally executed works and computer programs shall also be considered literary works.

Reproduction

Reproduction has been included in the law according to Directive 2001/29/EC.

Communication of the Work to the Public

Communication of the Work to the Public has been included in the law according to Directive 2001/29/EC.

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.³⁸⁵

Copyright in a cinematographic work will last for 70 years after death of last living author.³⁸⁶

In case of an unknown author, the term of protection is 70 years after the year in which it was disseminated. In case of non-dissemination, the term of protection is 70 years after the year in which the work was created.³⁸⁷

Anyone who for the first time publishes or disseminates a previously unpublished or non-disseminated work, which has been protected under Finnish law and the protection of which has expired, shall be entitled to a right in the work that shall subsist for 25 years after the year in which the work was disseminated.³⁸⁸

380 Art. 1 (446/1995)

381 Art. 6

382 Art. 5

383 Art. 4

384 Art. 7

385 Art. 43 (1654/1995)

386 Art. 43 (1654/1995)

387 Art. 44 (1654/1995)

388 Art. 44a (1654/1995)

Neighbouring rights for recorded performances of a literary or artistic work³⁸⁹, phonograph records³⁹⁰, film and moving images³⁹¹, radio or television transmissions³⁹² and photos³⁹³ are protected for 50 years.

II. Free Use of the Work / Limitations to the Copyright

No definition of the term ‘free use’ has been indicated.

The Finnish Copyright Act does not specifically mention the three-step-test.

Copies of published works may be reproduced through photocopying or similar means on the basis of an extended collective license³⁹⁴: photocopying is subject to an extended collective license and is not considered a copyright limitation.

The cases of free use are included in a limited sense completed with the system of extended collective licenses.

Quotation

A disseminated work may be quoted, in accordance with proper usage, to the extent necessary for the purpose.³⁹⁵

Use of works of art is allowed as follows according to the Art. 25 (14.10.2005/825).

(1) Works of art made public may be reproduced in pictorial form in material connection with the text:

1. in critical or scientific presentation; and
2. in a newspaper or a periodical when reporting on a current event, provided that the work has not been created in order to be reproduced in a newspaper or a periodical.

(2) When a copy of a work of art has, with the consent of the author, been sold or otherwise permanently transferred, the work of art may be incorporated into photograph, a film, or a television programme if the reproduction is of a subordinate nature in a photograph, film or programme.

Education

Whenever an organization, representing a large number of Finnish authors in a certain field, has given an authorization for the making, on agreed-upon terms, of copies by audio or video recording of a disseminated work included in a radio or television transmission, for use in educational activities or in scientific research, the recipient of the authorization may on corresponding terms make copies also of a work in the same field, included in a transmission, the author of which is not represented by the organization.³⁹⁶

Compilation works for use in education: minor parts of a work or, if it is not extensive, the whole work, may be inserted into a printed compilation intended for use in education. This regulation does

389 Art. 45 (1654/1995)

390 Art. 46 (1654/1995)

391 Art. 46a (1654/1995)

392 Art. 48 (1654/1995)

393 Art. 49

394 Art. 13

395 Art. 22 (446/1995)

396 Art. 14 (446/1995)

not allow copies of (whole or part of) works made for education and usage of works younger than 5 years.³⁹⁷

Published works may be publicly performed for educational purposes.³⁹⁸ This is not the case for cinematographic or dramatic works: cinematographic works may only be publicly performed for university level cinematographic education.³⁹⁹

Libraries, museums and archives

According to Article 16 (14.10.2005/821) of the Finnish Copyright Act an archive, and a library or a museum open to the public, to be determined in a Government Decree, may, unless the purpose is to produce direct or indirect financial gain, make copies of a work in its own collections for the purpose of preserving material and safeguarding its preservation; for the purpose of technically restoring and repairing material; for the purpose of administering and organising collections and for other internal purposes required by the maintenance of the collection; for the purpose of supplementing a deficient item or completing a work published in several parts if necessary complement is not available through commercial distribution or communication.

Special indications are given for the National Audiovisual Archive: this institution may also make a copy of a work made available to the public through dissemination in radio or television in order to incorporate them within their collections.⁴⁰⁰

According to Article 16 a (14.10.2005/821) an archive or a library open to the public, to be determined in a Government Decree, may, unless the purpose is to produce direct or indirect financial gain

1. make copies of a work in its collections which is susceptible to damage by photocopying or by corresponding means and make them available to the public through lending if the work is not available through commercial distribution or communication:
2. where seen appropriate, make copies by photocopying or by corresponding means of individual articles in composite literary or artistic works, newspapers and periodicals and of short passages in other published works to be handed over to the borrowers for their private use in lieu of the volumes and booklets wherein they are contained.

Closed network display

According to 16 a (2) an archive, and a library or a museum open to the public, to be determined in a Government Decree, may, unless the purpose is to produce direct or indirect financial gain, communicate a work made public that it has in its collections, to a member of the public for purposes of research or private study on a device reserved for communication to the public on the premises of the institution. This shall be subject to the provision that the communication can take place without prejudice to the purchasing, licensing and other terms governing the use of the work and that the digital reproduction of the work other than reproduction required for use referred to in this subsection is prevented, and provided that the further communication of the work has been prevented.

The provisions related to libraries are stated in the paragraph 16 b as well as the provisions related to the National Audiovisual Archive in 16 c.

Art in the public space

397 Art. 18

398 Art. 21

399 Art. 16c

400 Art. 16c

A work of art may be reproduced in pictorial form when it is permanently located in a public place. If the work of art is the main feature of the picture, the picture may not be used for the purpose of profit. A building may also be freely reproduced in pictorial form.⁴⁰¹

Portrait

There is no specification on portrait rights, but the Act includes those of photographs, which are not considered as photographic works according to the Art. 1 of the Finnish Copyright Act but photographic pictures: "simple photographs". The threshold of originality is used to make the distinction. According to the Article 49a, a photographer shall have the exclusive right to control a photographic picture, be it in an original form or in an altered form by making copies thereof as well as by making it available to the public. The right shall be in force until 50 years have elapsed from the end of the year during which the photographic picture was made.

III. Database

No definition of 'database' has been indicated.

Database creator

The person who has made a catalogue, table, program or any other production in which a large quantity of data are compiled, or a database has the exclusive right to dispose of the whole or of a substantial part, evaluated qualitatively or quantitatively, of the production by making copies of it and by making it available to the public. In order to claim this right, it has to be illustrated that there has been a substantial investment in either the obtaining, verification or presentation of the contents of the database.⁴⁰²

Term of protection

The rights specified above in this paragraph run for 15 years.⁴⁰³

IV. Infringement of Authors' Rights

Protection Against the Circumvention of Technological Measures / Rights Management Data

Technological measures are defined as technologies, devices or components which in the normal course of their operation, serve to prevent or restrict acts, in respect to copyrighted works, which are not authorized by the author or subsequent right holders.⁴⁰⁴

The act of circumvention is prohibited. A person has the right, however, to view or listen to copies legally acquired even if circumvention is required to do so. Excluded from the legal protection of technological measures is circumvention of technological measures in order to conduct encryption research or in order to be able to listen to or view a work, provided the copy of the work has been legally acquired, but this does not give the user a right to make copies of the work even for private use (e.g. back-up).⁴⁰⁵

401 Art. 25a (3)

402 Art. 49

403 Art. 49

404 Art. 50a

405 Art. 50



Circumvention seems to be allowed if the technological measure protects material that is not copyrightable, has fallen into the public domain or does not cover an exclusive right defined in the Act.⁴⁰⁶

Mediation Procedure

Where a work or access to a work has been lawfully acquired, the person has the right to use the work to the extent necessary in accordance with the specified copyright limitations such as reproduction in libraries. The author and anyone who has been authorized by the author to make a work available to the public have the obligation to allow the users.⁴⁰⁷

The obligation to provide the means to use a work does not apply to works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them (online).⁴⁰⁸

The obligation to allow the uses mentioned in the exemptions above is to be fulfilled primarily through voluntary means. In case this is not possible, the statute provides for an arbitration procedure. According to the Act, only the users defined in the copyright exemptions mentioned above may request an arbitration procedure. This excludes other interested parties, such as users of libraries and museums, from bringing a case to arbitration.⁴⁰⁹

The Protection of the Rights Management Data

No specifications on Rights Management Data have been indicated.

406 Art. 50a

407 Art. 50c

408 Art. 50c

409 Art. 50c

Country

France

Act

‘Code de la propriété intellectuelle’, consolidated version on April 21st 2009

I. General Provisions

The Scope of the Act

The author of an intellectual creation has exclusive rights in this work by the mere fact of its creation. The nature of these rights is as well intellectual and moral as economic.⁴¹⁰ The title of an intellectual creation is likewise protected.⁴¹¹

The author is the person under who’s name the work is made public.⁴¹²

The Act protects author’s rights for all intellectual works, in any genre, type of expression and intention.⁴¹³ An extensive list of types of intellectual creations is indicated in the Act.⁴¹⁴

Further indications are given for translation and alteration of a work⁴¹⁵, anonymous works or works under pseudonym⁴¹⁶, works with joint authorship⁴¹⁷, authorship in collective works⁴¹⁸, audiovisual works⁴¹⁹ and radiophonic works.⁴²⁰

Reproduction

The author’s exploitation right includes the right of reproduction.⁴²¹ Every reproduction (in total or in part) is subject to author’s authorisation.⁴²²

Reproduction is defined as the material fixation of the work by any means permitting the communication to the public in an indirect way. This may in particular be expressed by print, drawing, engraving, photography, moulding and any other graphic and plastic expression manner. In case of architectural works, reproduction means the repeated execution of a plan or type of project.⁴²³

Communication of the Work to the Public

410 Art. L111-1

411 Art. L112-4

412 Art. L113-1

413 Art. L112-1

414 Art. L112-2

415 Art. L112-3

416 Art. L113-6

417 Art. L113-3

418 Art. L113-4, Art. L113-5

419 Art. L113-7

420 Art. L113-8

421 Art. L122-1

422 Art. L122-4

423 Art. L122-3

The author's exploitation right includes the right of communication of the work to the public.⁴²⁴ Communication of the work to the public is defined as communication by any procedure, and in particular by public recitation, lyrical expression, dramatic performance, public presentation and projection and broadcast transmission.⁴²⁵

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁴²⁶ Copyright in an audiovisual work and work with joint authorship will last for 70 years after death of last living author.⁴²⁷

Rights to an anonymous and pseudonymous work run for 70 years from the time the work was lawfully made public. However if, during the above period, the author discloses his identity or when the pseudonym adopted by the author leaves no doubt as to his identity, the general rules apply.⁴²⁸

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author, lasting for 25 years.⁴²⁹

Neighbouring rights for performers and performances⁴³⁰, phonogram producers⁴³¹, videogram producers⁴³² and audiovisual communication enterprises⁴³³ are protected for 50 years after death.

II. Free Use of the Work / Limitations to the Copyright

No definition of 'free use' has been indicated.

The French Copyright Act includes the three-step-test: the exceptions listed in the Act may not prevent normal exploitation of the work and may not unreasonably prejudice the legitimate interests of the right holder. Uses that are not in proportion with the scope of their purpose, are subject to remuneration.⁴³⁴

The regulations on limitations on copyright as indicated below also apply for related rights.

Quotation

If a work has been made public and the name of the author and source of the work are mentioned, the author can not prevent short quotations from the work, justified by their critical, polemic, pedagogical, scientific and informational character.⁴³⁵

424 Art. L122-1

425 Art. L122-2

426 Art. L123-1

427 Art. L123-2

428 Art. L123-3

429 Art. L123-4

430 Art. L211-4 (1)

431 Art. L211-4 (2)

432 Art. L211-4 (3)

433 Art. L211-4 (4)

434 Art. L122-5

435 Art. L122-5 (3)

Education

If a work has been made public and the name of the author and source of the work are mentioned, the author can not prevent the communication of reproduction of parts of works, provided they serve as illustration in education and research. The communication may only happen in case a major part of persons present are students, pupils, teachers or researchers. The communication or reproduction may not suggest commercial intentions and has to be remunerated by an adequate compensation.⁴³⁶

Libraries, museums & archives

If a work has been made public and the name of the author and source of the work are mentioned, the author can not prevent the reproduction of a work, executed for the purpose of conservation or destined to preserve the conditions of consultation on site by publicly accessible libraries, museums or archival services, provided they do not strive for any economic or commercial advantages.⁴³⁷

Closed network display

No explicit statements concerning the display of the work on the premises of the institution, e.g. only in dedicated terminals, have been indicated.

Art in the public space

No specifications on e.g. the making of photographs of artworks located in the public space, have been indicated.

Portrait

No specifications for portrait rights have been indicated.

III. Databases

No definition of 'database' has been indicated.

Database creator

The creator of a database, meaning the person undertaking the initiative and risk of investments alike, benefits from a protection of the content of the database when its arrangement, verification or presentation shows a substantial financial, material or human investment.⁴³⁸

The creator of a database has the right to prohibit the extraction (the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form) and re-utilization (any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission) of the database, in whole or in part.⁴³⁹

Conditions for extraction and re-utilization

436 Art. L122-5 (3)

437 Art. L122-5 (8)

438 Art. L341-1

439 Art. L342-1

If a work has been made public and the name of the author and source of the work are mentioned, the author can not prevent the necessary actions to get access to the contents of an electronic database as provided by the use as stated in a user contract.⁴⁴⁰

It is allowed to extract or re-utilize a substantial part of the contents of the database, evaluated qualitatively or quantitatively, for the purposes of education, illustration in education or research, in case a major part of users are students, pupils, teachers or researchers. The extraction or re-utilization may not suggest commercial intentions and has to be remunerated by an adequate compensation.⁴⁴¹

Term of protection

The rights specified in the paragraphs ‘Database creator’ above shall run for 15 years from the 1st of January after the year in which the database was made public. If any changes that may be regarded as qualitatively or quantitatively substantial are made in the contents of the database, as well changes in it resulting from the accumulation of successive additions, deletions or changes as a result of which it may be considered that a new investment which may be regarded as qualitatively or quantitatively substantial, has been made, such database has the right to its own term of protection (for 15 years).⁴⁴²

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Effective technological measures destined to prevent or limit unauthorised uses, applied by right holders are protected by this Act (this is not the case if the work is a phonogram, videogram or computer program). Technical measures are defined as any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or any right related to copyright. Technological measures shall be deemed “effective” where the use of a protected work or other subject-matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.⁴⁴³

The Act does not specify whether the circumvention/alteration/... of these technological measures is explicitly prohibited.

Mediation Procedure

Every editor of a tool, every producer of technical systems and every user of such a service may, in case of access refusal of essential information concerning the interoperability, ask the ‘*Autorité de régulation des mesures techniques*’ to guarantee the interoperability of existing systems and services, and ask the right holder for the appropriate rights on the technological measures that are essential to the interoperability.⁴⁴⁴

440 Art. L122-5 (5)

441 Art. L342-3 (1-4)

442 Art. L342-5

443 Art. L331-5

444 Art. L331-7



The copyright limitations that are stated in this Act, e.g. related to reproduction by libraries and archives, provide that right holders should ensure to the beneficiaries the benefit of the exception to the extent necessary and where that beneficiaries have legal access to the protected work or subject-matter concerned. If the right holders do not take voluntary measures including agreements between right holders and third parties benefiting from the exception, they may call upon the assistance of the '*Autorité de régulation des mesures techniques*' as a mediator.⁴⁴⁵ Right holders who applied technological measures to their work may however limit the number of copies the beneficiaries are allowed to make.⁴⁴⁶

The Protection of the Rights Management Data

Information in electronic form, concerning the applied rights in a work (other than a phonogram, videogram or computer program) is protected by this Act. Electronic rights information is defined as every information applied by a right holder that permits to identify a work.⁴⁴⁷ The Act does not specify whether the circumvention/alteration/... of right management data is explicitly prohibited.

445 Art. L331-8

446 Art. L331-9

447 Art. L331-22

Country

Germany

Act

Gesetz über Urheberrecht und verwandte Schutzrechte (Urheberrechtsgesetz) 1965, zuletzt geändert durch das Gesetz vom 7. Dezember 2008.

I. General Provisions

The Scope of the Act

The author of a literary, scientific or artistic work enjoys protection for their works according to the specifications in this Act.⁴⁴⁸ A list of types of works is indicated in the Act.⁴⁴⁹

The author is the creator of the work.⁴⁵⁰ Copyright protects the author in his personal and intellectual interests towards the work. It also secures the adequate remuneration for the use of his work.⁴⁵¹

Whoever, on ground of copies of a published work or on ground of the original work is known as the author, will until proven otherwise, be regarded as the author of the work.⁴⁵²

Further specifications are given for works created under employment⁴⁵³, collective works⁴⁵⁴, works with joint authorship⁴⁵⁵.

Reproduction

The right of reproduction is the right to make reproductions of the work, regardless of whether permanent or transient, by whatever process or form, in any number. A reproduction is also a fixation of a work on image and sound carriers, whether it is a direct fixation or the fixation of an already existing recording.⁴⁵⁶

Communication of the Work to the Public

The right of communication to the public is the right to make the work available, by wire or wireless means, so members of the public can access it in a place and time individually chosen by them.⁴⁵⁷

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁴⁵⁸

448 Art. 1

449 Art. 2

450 Art. 7

451 Art. 11

452 Art. 10 (1)

453 Art. 5

454 Art. 9

455 Art. 8

456 Art. 16

457 Art. 19a

458 Art. 64

Copyright in an audiovisual work and work with joint authorship will last for 70 years after death of last living author.⁴⁵⁹

Rights to an anonymous and pseudonymous work run for 70 years from the time the work was lawfully made public. However if, during the above period, the author discloses his identity or when the pseudonym adopted by the author leaves no doubt as to his identity, the general rules apply.⁴⁶⁰

Neighbouring rights for performers, their performances and the fixations thereof⁴⁶¹, broadcasting organisations⁴⁶², phonogram producers⁴⁶³ and film producers⁴⁶⁴ are protected for 50 years after death.

II. Free Use of the Work / Limitations to the Copyright

No definition of 'free use' has been indicated

In all cases of use stated under this heading, the source of the work has to be indicated.⁴⁶⁵

Quotation

It is permitted to make quotations from works, in as far as the use of these excerpts is justified by the extent of their use. This quotation is in particular permitted when the quotation is used for illustration in a scientific work, when the quotation is part of a spoken performance and when the quotation is part of a musical performance.⁴⁶⁶

Education

It is permitted to make available and reproduce small (parts of) works for the purposes of education in schools and higher education establishments (except for universities) and for a limited group of pupils or students. It is also permitted to make available small (parts of) works for a dedicated group of persons for their own scientific research, as long as no commercial advantage is being pursued.⁴⁶⁷

The right holder has to give his permission for these actions. The making available of a film, during the first two years it has been in rotation in theatres, has to be authorised by the film's right holders.⁴⁶⁸

An adequate remuneration for the use of material in education has to be paid; this can happen through a collective rights management organisation.⁴⁶⁹

It is permitted to make reproductions of a work for private scientific use, only if the reproduction and its use do not serve commercial purposes.⁴⁷⁰

459 Art. 65

460 Art. 66

461 Art. 76

462 Art. 87 (3)

463 Art. 85 (3)

464 Art. 94 (3)

465 Art. 63 (1)

466 Art. 51

467 Art. 52a (1,3)

468 Art. 52a (2)

469 Art. 52a (4)

Libraries, museums & archives

It is permitted to reproduce and distribute works of art and of photographs in catalogues, which are published by public libraries, museums or educational institutions either in connection with a public exhibition or for the purpose of documentation of a collection. The limitation has been limited to non-commercial uses.⁴⁷¹

It is permitted to make copies for inclusion into an 'own' archive; it is restricted to internal collections of all types (not necessarily in libraries). The archive must not be accessible to third parties. This is only permitted for reproductions on paper or a similar medium and in situations where an exclusive analogue use is intended or where the archive is not created for commercial purposes.⁴⁷²

Closed network display

Publicly accessible libraries, museums and archives may, when there is no direct or indirect commercial purpose, give access to published works from the institution's collection, except when this is prohibited by contractual agreement. The number of copies made available at the same time may not exceed the number of copies within the institution. The purpose of the making available must be for research and private study, and can only happen through dedicated terminals on the premises of the institution. An adequate remuneration has to be paid, this can happen through a collective rights management organisation.⁴⁷³

Art in the public space

It is allowed to make paintings, graphic work, photographs and films of works located permanently in public places and distribute or display these in public.⁴⁷⁴

Portrait

It is permitted to reproduce for non-commercial purposes a portrait, by the commissioner of the work or his successor.⁴⁷⁵

III. Databases

A database is defined as a collection of which the elements have been organised in a systematic or methodical manner, and which is accessible by electronic or any other means. The database has to show a substantial investment of the creator. A database that has been considerably changed in content or volume, will be considered a new database.⁴⁷⁶

For the purpose of this Copyright Act, the computer program needed to access the data is not part of the database itself.⁴⁷⁷

470 Art. 53 (2)

471 Art. 58 (2)

472 Art. 53 (2)

473 Art. 52b

474 Art. 59

475 Art. 60 (1)

476 Art. 87a (1)

477 Art. 4 (2)

Database creator

The creator of a database is the person who undertook the substantial investment as noted in the above paragraph.⁴⁷⁸

The creator of a database has the exclusive right to, in whole or in part, reproduce the database, distribute it and make it available to the public.⁴⁷⁹

Conditions for extraction and re-utilization

It is permitted to make reproductions of a reasonable part of a database for private use, except when the database has to be accessed by electronic means; for own scientific use, when the use happens conform the purpose which has to be non-commercial; for the use in education, when this use is non-commercial in nature. The source of the works has to be indicated in the last two cases.⁴⁸⁰

Term of protection

The rights specified above in the paragraph 'Database creator' run for 15 years from its publication.

IV. Infringement of Authors' Rights

Protection Against the Circumvention of Technological Measures

Technical measures are defined as technologies that are in normal use, implemented to prevent the work from acts that are not authorised by the right holder of the work. They are deemed effective when they control the access to the specific work on which the technological measures have been applied.⁴⁸¹

Acts of circumvention of effective technological measures are prohibited if the person doing so knew or had, under the circumstances, sufficient reason to believe that the act of circumvention is carried out in order to enable access or use of a work protected under the Copyright Act.⁴⁸²

This provision does not cover computer programs.⁴⁸³

Mediation Procedure

The copyright limitations that are stated in this Act, e.g. related to reproduction by libraries and archives, provide that right holders should have the obligation to give to the beneficiaries the measures to ensure the benefit of the exception to the extent necessary and where that beneficiaries have legal access to the protected work or subject-matter concerned.⁴⁸⁴

This provision does not cover computer programs.⁴⁸⁵

The Protection of the Rights Management Data

Rights information is defined as electronic information that identify the right holder of the work and provide information on the specifications for the use of the work.⁴⁸⁶

478 Art. 87a (2)

479 Art. 87b (1)

480 Art. 87d

481 Art. 95a (2)

482 Art. 95a (1)

483 Art. 69a (5)

484 Art. 95b (1)

485 Art. 69a (5)



The removal or modification of rights management information applied by the right holder if prohibited.⁴⁸⁷

Works from which the rights information has been removed or altered, may not be distributed or made available to the public.⁴⁸⁸

486 Art. 95c (2)

487 Art. 95c (1)

488 Art. 95c (3)

Country

Greece

Act

Copyright, Related Rights and Cultural Matters: Law No. 2121/1993 as amended by Law No. 3057/2002 (article 81) and by Law 3207/2003 (article 10 par. 33) and by Law 3524/2007 (articles 1 and 2)

I. General Provisions

The Scope of the Act

Authors shall have the right of copyright in that work, which includes, as exclusive and absolute rights, the right to exploit the work (economic right) and the right to protect their personal connection with the work (moral right).⁴⁸⁹

The term “work” shall designate any original intellectual literary, artistic or scientific creation, expressed in any form, notably written or oral texts, musical compositions with or without words, theatrical works accompanied or unaccompanied by music, choreographies and pantomimes, audiovisual works, works of fine art, including drawings, works of painting and sculpture, engravings and lithographs, works of architecture and photographs, works of applied art, illustrations, maps and three-dimensional works relative to geography, topography, architecture or science. Additional meanings of “work” are given.⁴⁹⁰

Further specifications are given for works of joint authorship, collective and composite works⁴⁹¹, works created under employment⁴⁹², authorship in audiovisual works⁴⁹³, presumption of authorship⁴⁹⁴ and anonymous or pseudonymous works⁴⁹⁵.

Reproduction

No definition of the term ‘reproduction’ has been indicated.

The author has the right to permit or prohibit the fixation and direct or indirect, temporary or permanent reproduction of their works by any means and in any form, in whole or in part.⁴⁹⁶

Communication of the Work to the Public

The communication of a work to the public is defined as by wire or wireless means or by any other means, the making available to the public of a work in such a way that members of the public may access these works from a place and at a time individually chosen by them.⁴⁹⁷

The Term of Protection

489 Art. 1 (1)

490 Art. 2 (1-3)

491 Art. 7

492 Art. 8

493 Art. 9

494 Art. 10

495 Art. 11

496 Art. 3 (1)

497 Art. 3 (1) h

Author's rights shall in general run for the life of the author and 70 years after his death.⁴⁹⁸

Copyright in an audiovisual work will last for 70 years after death of last living author.⁴⁹⁹

Rights to an anonymous and pseudonymous work run for 70 years from the time the work was lawfully made public. However if, during the above period, the author discloses his identity or when the pseudonym adopted by the author leaves no doubt as to his identity, the general rules⁵⁰⁰ apply.

After the expiry of the period of copyright protection, the State, represented by the Minister of Culture, may exercise the rights relating to the acknowledgment of the author's paternity and the rights relating to the protection of the integrity of the work deriving from the moral rights in this Act.⁵⁰¹

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author, lasting for 25 years.⁵⁰²

Neighbouring rights for performers and performances⁵⁰³, phonogram producers⁵⁰⁴, producers of audiovisual fixations⁵⁰⁵ and radio and television broadcasters⁵⁰⁶ are protected for 50 years after death.

II. Free Use of the Work / Limitations to the Copyright

No definition of 'free use' has been indicated.

The Greek Copyright Act includes the three-step-test: the limitations provided for in this act shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other protected subject-matter and do not unreasonably prejudice the legitimate interests of the right holder.⁵⁰⁷

Cases of free use are interpreted with limitation under the present jurisdiction. No guidance is available from case law. The legal theory suggests that the limitations provided for in the act should all be interpreted with limitation.

Quotation

Quotation of short extracts of a lawfully published work by an author for the purpose of providing support for a case advanced by the person making the quotation or a critique of the position of the author shall be permissible without the consent of the author and without payment, provided that the quotation is compatible with fair practice and that the extent of the extracts does not exceed that

498 Art. 29 (1)

499 Art. 31 (3)

500 Art. 31 (1)

501 Art. 29 (2)

502 Art. 51A

503 Art. 52 (c)

504 Art. 52 (d)

505 Art. 52 (d)

506 Art. 52 (e)

507 Art. 28C

justified by the purpose. If possible the quotation must be accompanied by an indication of the source of the extract and of the names of the author and of the publisher.⁵⁰⁸

Education

The reproduction of lawfully published literary works of one or more writers in educational textbooks approved for use in primary and secondary education by the Ministry of National Education and Religions or another competent ministry, according to the official detailed syllabus, shall be permissible without the consent of the authors and without payment. The reproduction shall encompass only a small part of the total output of each of the writers and shall not conflict with the normal exploitation of the work from which the texts are taken and must be accompanied if possible by an indication of the source and of the names of the author and the publisher.⁵⁰⁹

Under the same conditions it is permitted to reproduce articles lawfully published in a newspaper or periodical, short extracts of a work or parts of a short work or a lawfully published work of fine art work exclusively for teaching or examination purposes at an educational establishment.⁵¹⁰

Libraries, museums & archives

It shall be permissible, without the consent of the author and without payment, for a non profit-making library or archive to reproduce one additional copy from a copy of the work already in their permanent collection, for the purpose of retaining that additional copy or of transferring it to another non profit-making library or archive. The reproduction shall be permissible only if an additional copy cannot be obtained in the market promptly, and on reasonable terms.⁵¹¹

The “backup copy” is an acceptable copy under Greek copyright law in general – not only in favour of libraries.

In cases where the holder of the economic right abusively withholds consent for the reproduction of a cinematographic work of special artistic value, for the purpose of preserving it in the National Cinematographic Archive, the reproduction shall be permissible without his consent and without payment.⁵¹²

The presentation of a fine art work to the public, and its reproduction in catalogues to the extent necessary to promote its sale, shall be permissible, without the consent of the author and without payment.⁵¹³

Closed network display

No explicit statements concerning the display of the work on the premises of the institution, e.g. only in dedicated terminals, have been indicated.

Temporary acts of reproduction which are transient or incidental, which are an integral and essential part of a technological process and whose sole purpose is to enable a transmission in a network between third parties by an intermediary shall be exempted from the reproduction right.⁵¹⁴

Art in the public space

508 Art. 19

509 Art. 20 (1,3)

510 Art. 21

511 Art. 22

512 Art. 23

513 Art. 28 (2)

514 Art. 28B

The occasional reproduction and communication by the mass media of images of architectural works, fine art works, photographs or works of applied art, which are sited permanently in a public place, shall be permissible, without the consent of the author and without payment.⁵¹⁵

Portrait

No specifications for portrait rights have been indicated.

III. Databases

A database is a collection of independent works, data or other, materials arranged in a systematic or methodical way and individually accessible by electronic or other means. Databases which constitute the author's intellectual creation because of the selection or arrangement of their contents shall be protected as such by copyright. The copyright protection shall not extend to the contents of databases and shall be without prejudice any rights subsisting in those contents themselves.⁵¹⁶

Database creator

The creator of a database has the right, which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents, to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database. The creator of a database is the individual or legal entity who takes the initiative and bears the risk of investment. The database contractor is not considered as creator.⁵¹⁷

Conditions for extraction and re-utilization

The repeated and systematic extraction and/or re-utilization of immaterial parts of the content of the database are not allowed, if they involve actions opposed to the normal exploitation of the database or unjustifiably prejudice the lawful rights of the creator of the database.⁵¹⁸

The lawful user of a database made available to the public by any means may, without the permission of the creator of the database, extract (the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form) and/or re-utilize (any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission) a material part of its content when the extraction is made for educational or research purposes, provided that the source is quoted, and to the extent that it is justified by the non commercial purpose pursued.⁵¹⁹

Term of protection

The rights specified above in the paragraph 'Database creator' run for 15 years. Any substantial change to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database

515 Art. 26

516 Art. 2

517 Art. 45A (1)

518 Art. 45A (4)

519 Art. 45A (6)

being considered to be a substantial new investment, shall qualify the database resulting from that investment for its own term of protection.⁵²⁰

IV. Infringement of Authors' Rights

Protection Against the Circumvention of Technological Measures

Technological measures are defined as any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the right holder of any copyright or any right related to copyright as well as the *sui generis* right of the data base creator. Technological measures shall be deemed “effective” where the use of a protected work or other subject-matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.⁵²¹

It is prohibited to circumvent, without the permission of the right holder, any effective technological measure when such act is made in the knowledge or with reasonable grounds to know that he is pursuing that objective.⁵²²

Mediation Procedure

The copyright limitations that are stated in this Act, e.g. related to reproduction by libraries and archives, provide that right holders should have the obligation to give to the beneficiaries the measures to ensure the benefit of the exception to the extent necessary and where that beneficiaries have legal access to the protected work or subject-matter concerned. If the right holders do not take voluntary measures including agreements between right holders and third parties benefiting from the exception, the right holders and third parties benefiting from the exception may request the assistance of one or more mediators selected from the list of mediators drawn up by the Copyright Organization. The mediators make recommendations to the parties. If no party objects within one month from the forwarding of the recommendation, all parties are considered to have accepted the recommendation. Otherwise, the dispute is settled by the Court of Appeal of Athens trying at first and last instance. These provisions shall not apply to works or other subject-matter available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.⁵²³

The Protection of the Rights Management Data

Rights management information is defined as any information provided by right holders which identifies the work or other subject-matter protected by a related right or the *sui generis* right of data base creator, and which identifies the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.⁵²⁴

520 Art. 45A (7)

521 Art. 66A (1)

522 Art. 66A (2)

523 Art. 66A (5)

524 Art. 66B (1)



It is prohibited to remove or alter any electronic rights-management information, and to distribute works from which this information has been removed or altered.⁵²⁵

⁵²⁵ Art. 66B (2)

Country

Hungary

Act

Copyright Act of Hungary, No. LXXVI (1999), as amended through No. CXII (2008).

I. General Provisions

The Scope of the Act

The copyright shall belong to the person who has created the work; the author.⁵²⁶ Further specifications are given for works with joint authorship⁵²⁷, a collection of works⁵²⁸ and anonymous works or use of pseudonym⁵²⁹.

Reproduction

Reproduction means the direct or indirect fixation of the work in any manner on a tangible carrier, whether definitively or temporarily, and the making of one or several copies of the fixation. This also means the production of audio or video recording of the work, the storage of the work in a digital form on electronic devices, and the production in a tangible form of the work transmitted by the computer network.⁵³⁰

Communication of the Work to the Public

This right is defined as the right to communicate the work to the public by broadcasting, satellite broadcasting, encrypted broadcasting or in a manner other than broadcasting or other forms of communication resulting in simultaneous receptions.

The right covers the making available by cable or any other means of the work to members of the public can choose the place and time of the availability individually.⁵³¹

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁵³²

In case of an unknown author, the term of protection is 70 years from the 1st day of the year following the first disclosure of the work.⁵³³

Neighbouring rights for sound recordings and their fixed performances, other unfixed performances, broadcast programmes, own programmes communicated by cable to the public and films are protected for 50 years.⁵³⁴

526 Art. 4 (1)

527 Art. 5, 6

528 Art. 7

529 Art. 8

530 Art. 18

531 Art. 26 (1, 8)

532 Art. 31 (1)

533 Art. 31 (3)

534 Art. 84 (1)

II. Free Use of the Work / Limitations to the Copyright

Free uses are defined as uses which can be made without authorization and without payment of remuneration.⁵³⁵ The Hungarian Copyright Act also includes the three-step-test (The use under the provisions relating to free use is permitted and not subject to the payment of a fee only so far as it does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, and it is in compliance with the requirements of fairness and is not designed for a purpose incompatible with the intention of free use)⁵³⁶ and directs courts not to interpret limitations in an extensive manner.⁵³⁷

Quotation

Quotations are permitted provided that the source and the name of the author are indicated, that the extent of the quotation is justified by the nature and purpose of the use of the work quoted and that it does not modify the quoted work.⁵³⁸

Education

The reproduction of excerpts from published literary and musical works film, images of visual art works, architectural, applied art and industrial design creations as well as artistic photographs may be incorporated into a work as an illustration for educational purposes and scientific research on the condition that the purpose is non-commercial.⁵³⁹

Copying parts of published books or articles from newspapers and other periodicals is also allowed for use in classrooms. This provision is restricted to the number of copies corresponding to the number of pupils in a class or for purposes of exam in public and higher education in a number necessary for the said purpose.⁵⁴⁰

Furthermore, for purposes of scientific educational lectures as well as of school education, it is permitted to freely use a picture of a work of fine art, applied art or architectural design.⁵⁴¹

The work may be altered for purposes of school education in the course of school classes within the scope of school lessons.⁵⁴²

Libraries, museums & archives

Publicly accessible libraries, educational establishments museums and archives (as well as audio audiovisual archives) may make copies if it is not intended for earning or increasing income even in an indirect way if

- a) the copy is required for scientific research, or archiving
- b) the copy is made for public library supply or for the purpose of research or private study on the premises of such establishments freely displayed to individual members of the public,

535 Art. 33 (1)

536 Art. 33 (2)

537 Art. 33 (3)

538 Art. 34 (1)

539 Art. 34 (2)

540 Art. 34 (5)

541 Art. 68 (2)

542 Art. 34 (4)

c) the copy is made of a minor part of a work made public or of an article published in a newspaper or periodical for internal institutional purposes, or

d) the copying is allowed by a separate law under certain conditions, in exceptional cases.⁵⁴³

Third parties – including the said libraries, museums and archives – within the framework of free use are not permitted to make such copies using an electronic medium or an electronic data carrier. The copy must also be made for private purposes (this includes the making of copies for purposes exceeding uses in the personal sphere).⁵⁴⁴ In this later case complete books, newspapers and journals are excluded from this provision unless transcribed by handwriting or typing, as is the reprographic copying of sheet music.⁵⁴⁵

Most importantly, the private copying exception does not apply with regard to fixations of public performances on phonograms or videograms.⁵⁴⁶ These before mentioned restrictions do not cover the cases of free uses for institutional purposes.

Nationwide professional libraries may freely lend individual copies of a work, except software and databases operated by computer devices.⁵⁴⁷

The Hungarian Patent Office (HPO) has the right to grant a non-exclusive license for the use – including the use of the said libraries, museums and archives – of unknown authors or of authors with an unknown place of residence (orphan works). The regulation covers any work in the case of which the person who intends to use it has made every measure to find the author which, in view of the nature of the work and manner of its use, are appropriate measures in a manner deemed reasonable, and still has not succeeded to locate him. The license is valid for five years, but it does not extend to the right of granting sub-licenses and to the making of derivative works.⁵⁴⁸

If the author or his place of residence becomes known during the term of the license the HPO shall revoke the license upon the request of the author or the user, with the effect that the use can be proceeded for the period not elapsed from the license but for no longer than one year from the date when the author or his place of residence became known. (footnote Art. 57/A (3)) For five years from the termination of the license or from the date of the final decision on the revocation the author may claim the compensation due to him.⁵⁴⁹

Closed network display

In the absence of a contractual provision to the contrary, works forming part of the collection of publicly accessible libraries, educational establishments, museums, archives, as well as audio and audiovisual archives, may be, for the purpose of research or private study, freely displayed to individual members of the public on the screens of dedicated terminals on the premises of such establishments, and, in the interest of this, they may be in a way and on conditions as provided for in separate legislation communicated, including their making available, to such members of the public, provided that this is not for direct or indirect earning or increasing income.⁵⁵⁰ A library can

543 Art. 35 (4)

544 Art. 35 (3)

545 Art. 35 (1)

546 Art. 35 (3)

547 Art. 39

548 Art. 57/A (1))

549 Art. 57/A (3)

550 Art. 38 (5)

only use the work if secure means against any alteration, retransmission and copying have been put in place.⁵⁵¹

Art in the public space

It is allowed to visualize works of fine art, architectural and applied art erected permanently outdoors in a public place without authorization and payment of remuneration.⁵⁵²

Portrait

No specifications for portrait rights have been indicated.

III. Database

A database is defined as a collection of independent works, data or other material arranged in a systematic or methodical way whose materials are individually accessible by computer devices or other means.⁵⁵³

The database provisions also cover the documentation necessary for their operation and accessing their contents, but not the software used in the making or operation of databases.⁵⁵⁴

Database creator

Authorization of the creator of a database is required for database reproduction by making copies (= 'extraction'), for making it available to the public through distribution (such as release for commercial circulation) of copies of the database or through communication to the public (= 're-utilization').⁵⁵⁵

Repeated and systematic extraction and/or re-utilization of even insubstantial parts of the contents of the database has to be authorised by the creator of the database.⁵⁵⁶

These rights shall apply to the creator of the database only if obtaining, verifying or presenting the contents of the database have required the investment of considerable resources.⁵⁵⁷

Conditions for extraction and re-utilization

An extract of even a substantial part of the contents of the database may be made by anyone for private and non-commercial purposes. This provision shall not apply to databases operated by computer devices.⁵⁵⁸

A copy of even a substantial part of the contents of the database may be made - in a manner and to the extent consistent with the use involved - for non-commercial purposes of school education and scientific research or of evidence in court of justice, administrative management or other authority proceedings.⁵⁵⁹

551 117/2004 (IV.28) Gov. Decree

552 Art. 68 (1)

553 Art. 60/A (1)

554 Art. 60/A (2,3)

555 Art. 84/A (1)

556 Art. 84/A (3)

557 Art. 84/A (5)

558 Art. 84/C (1)

559 Art. 84/C (2) en Art. 84/C (3)

Term of protection

The rights specified above in the paragraph ‘Database creator’ run for 15 years.⁵⁶⁰ The term of protection shall recommence in case the contents of the database have undergone a substantial alteration (successive additions, deletions and modifications) by as a result of which the altered database, as such, shall be rated as one completed with substantial resources.⁵⁶¹

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Technological measures are defined as any device, component, method or technology that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, which are not authorized by the copyright holder.⁵⁶² Infringement of these technological protection measures carries the same sanctions as infringement of copyright.⁵⁶³

Legal consequences of the infringement of copyright shall apply to the circumvention of any effective technological measures designed to provide protection for copyright, which the person concerned carries out in the knowledge that the aim of that act is pursuing that objective.⁵⁶⁴

Mediation procedure

Beneficiaries can demand that the right holder enables the use, provided the beneficiary has lawful access.⁵⁶⁵ The right to initiate proceedings does not subsist in case of online contracts.⁵⁶⁶

In the case of use in educational establishments, libraries, museums and archives, for purposes of making ephemeral recordings by broadcasters and for purposes of illustration of teaching, a beneficiary of such a free use may demand that the right holder, in spite of the protection granted against circumvention, make the free use possible for him.⁵⁶⁷ If the beneficiary and right holder cannot come to an agreement on making circumvention possible for the permitted free uses, then either party may initiate a procedure with the Copyright Mediation Board.⁵⁶⁸ The mediation has binding effect once a dispute resolution has been reached, which can be enforced through the courts if mediation has not resulted an agreement.⁵⁶⁹

The Protection of the Rights Management Data

Rights management information is defined as all particulars provided by the right holders which identify the work, the author of the work, the owner of any right in the work, or inform about the terms and conditions of the use of the work, including any numbers or codes that represent such

560 Art. 84/D (1)

561 Art. 84/D (2)

562 Art. 95(3)

563 Art. 99

564 Art. 95 (1)

565 Art. 95/A (1)

566 Art. 95/A (2)

567 Art. 95/A (1)

568 Art. 105/A (1)

569 Art. 105/A



information, when such data are attached to a copy of the work or are made perceptible in connection with the communication of the work to the public.⁵⁷⁰

The consequences of copyright infringement apply to the unauthorized removal or alteration of the rights management information as well as to the unauthorized distribution, importation for distribution, broadcasting or communication to the public in a different manner of works from which the right management information have been removed - or on which such information have been altered without authority, supposing that the person performing any of the acts referred to knows, or with the care expected to obtain in the given situation has reasonable grounds to know, that the acts unlawfully enable or facilitate the infringement of the copyright or induce others to commit such infringement.⁵⁷¹

570 Art. 96 (2)

571 Art. 96 (1)

Country

Israel

Act

The Copyright Act of 2007. This Act will come into force on May 25, 2008.

I. General Provisions

The Scope of the Act

Copyright shall subsist in original works which are literary works, artistic works, dramatic works or musical works, fixed in any form.⁵⁷² This applies to works that have been first published in Israel, or when at the time of the work's creation, its author was a citizen of Israel, or his habitual residence was in Israel, regardless of whether the work was published or not. Additional specifications are given for cinematographic works and sound recordings.⁵⁷³

The author of a work is the first owner of copyright in the work. The producer of a sound recording is the first owner of copyright in a sound recording.⁵⁷⁴

Copyright in a work means the exclusive right to reproduce, publicly perform, broadcast, rent or print a work, make it available to the public, and make a derivative work.⁵⁷⁵

The author of a work in which copyright subsists, shall have moral rights in relation to his work (To have his name identified with his work to the extent and in the manner suitable in the circumstances; That no distortion shall be made of his work, nor mutilation or other modification, or any other derogatory act in relation to the work, where any aforesaid act would be prejudicial to his honour or reputation)⁵⁷⁶, during the entire period of copyright in that work.⁵⁷⁷

Further specifications are given for works with state ownership⁵⁷⁸, commissioned works⁵⁷⁹ and works created by employees⁵⁸⁰.

Reproduction

The reproduction of a work is defined as the making of a copy of the work, in any material form, including storage of a work through electronic means or any other technological means; making a three dimensional copy of a two dimensional work; making a two dimensional copy of a three dimensional work and making a temporary copy of a work.⁵⁸¹

The transient copying, including incidental copying, of a work, is permitted if such is an integral part of a technological process whose only purpose is to enable transmission of a work as between

572 Art. 4 (a)

573 Art. 8

574 Art. 33 (1,2)

575 Art. 11

576 Art. 46

577 Art. 45 (a)

578 Art. 36

579 Art. 35

580 Art. 34

581 Art. 12

two parties, through a communications network, by an intermediary entity, or to enable any other lawful use of the work, provided the said copy does not have significant economic value in itself.⁵⁸²

Making a new artistic work which comprises a partial copying of an earlier work, or a derivative work from an earlier work, as well as any use of the said new work, are permitted to the author of the said earlier artistic work even where said author is not the owner of the copyright in the earlier artistic work, provided the new work does not repeat the essence of the earlier work or constitute an imitation thereof.⁵⁸³

Communication of the Work to the Public

Making a work available to the public means the doing of an act in relation to a work that shall enable members of the public to access the work from a place and at time chosen by them.⁵⁸⁴

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁵⁸⁵

Rights to an anonymous and pseudonymous work run for 70 years from the time the work was lawfully made public. If the author's identity becomes publicly known during the period of copyright, then the general rules apply.⁵⁸⁶

Copyright in a sound recording shall subsist for a period of 50 years from the date of its making.⁵⁸⁷

Copyright in a work in which the State is the first owner of the copyright shall last for a period of 50 years from the date of its making.⁵⁸⁸

II. Free Use of the Work / Limitations to the Copyright

The Israeli Copyright Act does not include 'free use', but indicates 'fair use' of a work. This is permitted for purposes such as private study, research, criticism, review, journalistic reporting, quotation, or instruction and examination by an educational institution.

In determining whether a use made of a work is fair within the meaning of this section the factors to be considered shall include the purpose and character of the use; the character of the work used; the scope of the use in relation to the work as a whole; the impact of the use on the value of the work and its potential market.

The Minister may make regulations prescribing conditions under which a use shall be deemed a fair use.⁵⁸⁹

Quotation

No specifications for quotation are indicated (However, one could see fair use as quotation).

Education

582 Art. 26

583 Art. 27

584 Art. 15

585 Art. 38

586 Art. 40

587 Art. 41

588 Art. 42

589 Art. 19

A public performance of a work is permitted in the course of the educational activity of educational institutions, of the type prescribed by the Minister, where such performance is made by the employees of the educational institution, or by the students studying therein, provided that said public performance is made in front of an audience limited to employees or students of the educational institution, the relatives of the students or other people directly connected with the activity of said institution.

The screening of a cinematographic work is permitted according to this section if done solely for purposes of teaching and examination by an educational institution.⁵⁹⁰

Libraries, museums & archives

Copying of a work, a copy of which is already in the permanent collection of a library or archive of the type of libraries or archives as prescribed by the Minister, is permitted (provided that it is not possible to purchase an additional copy of said work within a reasonable period of time and on reasonable terms) to make a reserve copy, in any format, of a work already in the possession of the aforesaid library or archive (provided that the said reserve copy is not used as an additional copy to the copies in the library). It is also permitted to replace a copy of the work held by the aforesaid library or the archive, which has been lost, destroyed or become unusable and to replace a copy of the work, that had been in the permanent collection of another library or archive and was lost, destroyed or has become unusable.

The copying of a work by entities of the type prescribed by the Minister, for purposes of preservation, is permitted. The Minister may prescribe types of works which will be subject to this subsection, conditions for the execution of copying as well as conditions for the grant of public access to copies that were made in accordance with this sub-section.

The Minister may prescribe different conditions for the applicability of these copyright limitations, generally or with respect to particular types of educational institutions, libraries or archives, taking into consideration the character of their respective activities.⁵⁹¹

Closed network display

No specifications are indicated for the display of material within the holdings of the library or archive, e.g. on dedicated terminals.

Art in the public space

Broadcasting, or copying by way of photography, drawing, sketch or similar visual description, of an architectural work, a work of sculpture or work of applied art, are permitted where the aforesaid work is permanently situated in a public place.⁵⁹²

Portrait

No specifications for portrait rights have been indicated.

III. Databases

No definition of 'database' has been indicated. No further specifications with regards to database copyright are indicated.

590 Art. 29

591 Art. 30, 31

592 Art. 23



IV. Infringement of Authors' Rights

No definition of 'technological measures' has been indicated. No further specifications with regards circumvention of technological measures, mediation or rights management data are indicated.

Country

Italy

Act

Law for the Protection of Copyright and Neighbouring Rights (Law No. 633 of April 22, 1941, as last amended by Law of 25 February 2008, N. 34).

I. General Provisions

The Scope of the Act

Copyright shall be acquired on the creation of a work that constitutes the particular expression of an intellectual effort.⁵⁹³

Works of the mind having a creative character and belonging to literature, music, figurative arts, architecture, theatre or cinematography, whatever their mode or form of expression, shall be protected in accordance with this Law.⁵⁹⁴ A list of types of works that can be copyright protected is indicated in the Act.⁵⁹⁵

A person who is shown, in the customary manner, as the author, or is announced as such in the course of the recitation, performance or broadcasting of a work shall, in the absence of proof to the contrary, be deemed the author of the work. Any pseudonym, professional name, initials or customary sign, well known as being equivalent to a true name, shall be deemed to have the same value as such true name.⁵⁹⁶

Further specifications are given for collective works⁵⁹⁷, derivative works⁵⁹⁸, anonymous works and use of pseudonym⁵⁹⁹ and works with joint authorship⁶⁰⁰.

The Italian Copyright Act contains special provisions on exploitation rights for dramatico-musical works, musical compositions with words, choreographic works and pantomime works⁶⁰¹; collective works, magazines and newspapers⁶⁰²; cinematographic works⁶⁰³; broadcast works⁶⁰⁴; works recorded on formats⁶⁰⁵; computer programs⁶⁰⁶ and databases⁶⁰⁷.

Reproduction

593 Art. 6

594 Art. 1

595 Art. 2

596 Art. 8

597 Art. 3

598 Art. 4

599 Art. 9

600 Art. 10

601 Art. 33-37

602 Art. 38-43

603 Art. 44-50

604 Art. 51-60

605 Art. 61-64

606 Art. 64 bis – 64 quarter

607 Art. 64 quinquies – 64 sexies

The exclusive right of reproduction is defined as the multiplication of copies of the work in all or in part, either direct or indirect, temporary or permanent, by any means or in any form, such as copying by hand, printing, lithography, engraving, photography, phonography, cinematography, and any other process of reproduction.⁶⁰⁸

Communication of the Work to the Public

The exclusive right of communication to the public of the work by wire or wireless means is defined as the use of any means of diffusion at a distance, such as telegraphy, telephony, radio or television broadcasting, and other like means including communication to the public by satellite and cable retransmission, as well as the encrypted transmission by means of specific conditions of access; it also includes the making available to the public of a work in such a way that members of the public may access it from a place and at a time individually chosen by them.⁶⁰⁹

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁶¹⁰

Rights to an anonymous and pseudonymous work run for 70 years from the time the work was lawfully made public. However if, during the above period, the author's identity is disclosed (by the same author or by another close member of his or her family) or when the pseudonym adopted by the author leaves no doubt as to his identity, the general rules apply.⁶¹¹

Further specifications are given for works with joint authorship⁶¹² and a collection of works⁶¹³.

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author, lasting for 25 years.⁶¹⁴

Without prejudice to the author's moral rights, any person who in any way or by any means publishes critical and scientific editions of works in the public domain shall enjoy exclusive exploitation rights in the work resulting from the critical and analytical assessment. The duration of these exclusive rights is 20 years from the first lawful publication in any form or by any means.⁶¹⁵

Phonogram producers⁶¹⁶; producers of cinematographic or audiovisual works or of sequences of moving images⁶¹⁷; radio and television broadcasting organisations⁶¹⁸ and performers⁶¹⁹ are granted so-called "neighbouring" rights which last 50 years from the date of first (respectively) sound recording, fixation, transmission, and performance..

608 Art. 13

609 Art. 16

610 Art. 25, 31

611 Art. 27

612 Art. 26

613 Art. 30

614 Art. 85 ter

615 Art. 85 quater

616 Art. 75

617 Art. 78 ter

618 Art. 79

619 Art. 80

II. Free Use of the Work / Limitations to the Copyright

No definition of ‘free use’ has been indicated.

The Italian Copyright Act implements the three-step-test in the following way. The exceptions and limitations in this Law, when applied to protected works or other subject-matter made available to the public in such a way that members of the public may access them in a time and from a place individually chosen by them, shall not conflict with the normal exploitation of the work or of the other subject-matter and not unreasonably prejudice the right-holders.⁶²⁰ The exceptions and limitations to authors’ right in this Chapter shall apply also to the neighbouring rights.⁶²¹

Copyright exceptions and limitations have been interpreted with limitation in Italian case law as a result of the very broad scope recognised by courts to the exclusive rights of commercial exploitation conferred to authors and holders of copyright related (i.e., neighbouring) rights.

Quotation & education

The abridgment, quotation or reproduction of fragments or parts of a work and their communication to the public for the purpose of criticism or discussion, shall be permitted within the limits justified for such purposes, provided such acts do not conflict with the commercial exploitation of the work. If they are made for teaching or research, the use must have the sole purpose of illustration, and non-commercial purposes.

As a consequence of a legislative amendment provided under Law of 9 January 2008, N. 2 (cf. article 2), the free publication on the Internet, on a gratuitous basis, of “low-resolution” or “degraded” music recordings for purposes of educational or scientific is allowed on condition that this use is undertaken for non-commercial ends. Limitations on this particular case of free use are specified by a decree of the Minister for University and Scientific Research.

In anthologies for school use, reproduction shall not exceed the extent specified in the regulations that shall also lay down the manner for determining equitable remuneration in respect of such reproduction. The abridgment, quotation or reproduction must always be accompanied by a mention of the title of the work, and of the names of the author, the publisher and, in the case of a translation, of the translator, whenever such mentions appear on the work that has been reproduced.⁶²²

Libraries, museums & archives

The photocopying of works available in publicly accessible libraries or in school libraries, in public museums or in public archives for the services of the said institutions shall be free, if made without any either direct or indirect economic or commercial advantage. It is worth emphasising that this specific exception does not see to apply to digital copying, which is therefore not allowed.⁶²³

Whereas reproductions for personal use of music papers and scores is always prohibited, personal copying of other protected works carried out by means of photocopying, xerocopying and similar machines is permitted within the limit of 15% of each volume or periodical issue (cf. art. 68, paragraph 3). Those responsible for the premises or copy centres, where copying or xerocopying machines or like reproduction systems are used or made available to third parties, even for free, are obliged to pay a remuneration to the authors and publishers of intellectual works published in printed form which have been reproduced by means of said machines. Reproductions of works available in public libraries, made inside the library by the means listed at the third paragraph, shall

620 Art. 71 nonies

621 Art. 71 decies

622 Art. 70

623 Art. 68 (2)

be permitted, within the limitations provided for in the same paragraph, on payment of a lump sum remuneration in favour of right-holders. The limitations shall not apply to works that are not present in publishing catalogues and that are rare, as they are hard to find through commercial channels.⁶²⁴ The distribution of such copies to the public and, in general, any use of them in competition with the exploitation rights of the author shall be prohibited.⁶²⁵

Closed network display

The communication or making available to individual members of the public is free if made for the purpose of research or private study by dedicated terminals on the premises of publicly accessible libraries, educational establishment, museums or archives, limited to the works and other subject matter contained in their collections that are not subject to purchase or licensing terms.⁶²⁶

It must be borne in mind that the concrete enforceability of the above-mentioned exception entirely depends on an unlikely broad interpretation of article 68(2) of the Copyright Act, which does not seem to grant public libraries, archives and museums the right to engage in free digital copying aimed at enabling services like that of closed network displays. How could these institutions engage in acts of making available through dedicated terminals if the necessary acts of digital copying involved in the process were unlawful? At the end of the day, this exception could be devoid of concrete meaning.

Art in the public space

No special indications of use of images from works located in the public space are stated in the Copyright Act, since the use of such images is regulated under the Italian Code of Cultural Heritage and Landscape (i.e., Legislative Decree N. 42/2004).

Portrait

The portrait of a person may not be displayed, reproduced or commercially distributed without the consent of such person.⁶²⁷ The consent of the person portrayed shall not be necessary when the reproduction of the portrait is justified by his notoriety or his holding of public office, or by the needs of justice or police, or for scientific, didactic, or cultural reasons, or when reproduction is associated with facts, events and ceremonies which are of public interest or which have taken place in public. However, the portrait may not be displayed or commercially distributed when its display or commercial distribution would prejudice the honour, reputation or dignity of the person portrayed.⁶²⁸

In the absence of agreement to the contrary, a commissioned photographic portrait may be published, reproduced, or caused to be reproduced by the person photographed or by his heirs or successors in title, without the consent of the photographer, subject to the payment of equitable remuneration to the photographer by any person making commercial use of the reproduction. If the name of the photographer appears upon the original photograph such name shall be mentioned.⁶²⁹

624 Art. 68 (5)

625 Art. 68 (6)

626 Art. 71 ter

627 Art. 96

628 Art. 97

629 Art. 98

III. Databases

A database is defined as a collection of works, data or other independent materials which is systematically or methodically arranged and can be individually accessed by electronic or other means. The copyright protection for databases shall not extend to their contents and shall be without prejudice to any rights subsisting in said contents.⁶³⁰

Database creator

The creator of a database is defined as the person making a qualitatively and/or quantitatively substantial investment in obtaining a database, and in verifying or presenting its contents by using financial resources, and time or effort.⁶³¹

The creator of a database shall have the right, under the term and conditions of this chapter, to prohibit any act of extraction (the permanent or temporary transfer of all or of a substantial part of the contents of a database to another medium by any means or in any form) or re-utilization (any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, or transmission by whatever means and in whatever form) of all or of a substantial part of it.⁶³²

Conditions for extraction and re-utilization

The authorization by the right-holder shall not be required where the database is accessed and visualized for the sole purpose of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purposes to be achieved. Within the above activities of access and visualization, the possible operations of permanent reproduction of the contents in whole or in a large part on any other carrier shall always be subject to the right holder's authorization.⁶³³

The creator of a database which is made available to the public for whatever reason may not prevent a lawful user of the database from extracting and/or re-utilizing parts of its content, evaluated qualitatively and/or quantitatively, for any purposes whatsoever. Where the lawful user is authorized to extract and/or to re-utilize only part of the database, this paragraph shall apply only to that part.⁶³⁴

Term of protection

The exclusive right of the creator depends on whether the database proves to be original enough so as to be protected by copyright. In this case, the term of protection expires 70 years after the author's death. To the contrary, if the database turns out to be a mere (i.e., non-original) aggregation of data created as a result of an investment, the work is protected by a *sui generis* right which shall run from the date of completion of the database making and shall expire 15 years after the date of such completion. In the case of a database which is made available to the public in whatever manner before expiry of this period, the term of protection by that right shall last 15 years from the 1st of January of the year following the date when the database was first made available to the public.⁶³⁵

630 Art. 2 (9)

631 Art. 102 bis (1) a

632 Art. 102 bis (3)

633 Art. 64 sexies (1) a

634 Art. 102 ter (3)

635 Art. 102 bis (6, 7)

Any substantial change or integration to the content of a database, involving considerable investment, shall result in a new term of protection, equivalent to the term provided above, which shall run from the date of completion of the modified database or of the date when the modified database was made available to the public and expressly qualified as “modified”.⁶³⁶

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Right-holders of any copyright or of any related right may apply on protected works or subject-matters any effective technological measures, including any technology, device or component that, in the normal course of its operation, are designed to prevent or restrict acts which are not authorised by them. Technological measures of protection shall be deemed ‘effective’ where the use of the protected work or other subject matter is controlled by the right-holders through application of an access control or protection process, such as encryption, scrambling or any other transformation of the protected work or subject-matter or it is limited through a copy control mechanism, which achieves the protection objective.⁶³⁷

Whoever unlawfully exploits by whatever means, broadcasts by air or transmits by cable, duplicates, reproduces protected works or subject matters, in whole or parts, also by using means intended to circumvent the technological measures of protection; purchases or rents audiovisual, phonographic, software or multimedia carriers, non-compliant with the provisions of this Law; purchases or rents devices, products or components intended to circumvent technological measures of protection shall be liable to a fine and to the ancillary sanctions of the forfeiture of the materials and of the publication of the sentence in a national newspaper.⁶³⁸

Mediation Procedure

The right-holders are obliged to adopt proper solutions, also by means of specific agreements with the associations representing beneficiaries in order to allow the exercise of the exceptions provided for libraries and archives (as stated in the previous section on free use) on beneficiaries’ specific request and on condition that the beneficiaries have acquired the lawful possession of the copies of the work or of the protected subject-matter or have lawfully accessed to them in order to use them, in accordance and within the limitations pursuant to the above mentioned articles, including the payment of fair compensation, if due.

The right-holders are not obliged by these provisions in respect of works or subject-matter made available to the public in such a way that members of the public may access them in a place and at a time individually chosen by them, when the access takes place on the basis of contractual agreements. Right-holders’ trade associations and the entities or associations representing the beneficiaries of the exceptions may enter negotiations in order to allow the exercise of the above exceptions. In the absence of such agreements, both parties may apply to the committee as indicated in the Act⁶³⁹, so that it may carry out the mandatory attempt for dispute resolution.⁶⁴⁰

Protection of the Rights Management Data

636 Art. 102 bis (8)

637 Art. 102 quater

638 Art. 174 ter

639 Art. 190

640 Art. 71 quinquies



Electronic information on copyright management may be inserted by right-holders of any copyright or related right, in the protected work or subject-matter, or may appear in connection with their communication to the public. The electronic information on rights management shall identify the protected work or subject-matter, as well as the author or any other right-holder. Said information may also contain particulars about the terms and conditions of use of the protected work or subject-matter as well as any numbers or codes that represent such information or other items of identification.⁶⁴¹

Any person who, for purposes other than personal use and with gainful intent, unlawfully removes or alters the electronic rights-management information shall be liable to imprisonment and a fine.⁶⁴²

641 Art. 102 quinquies

642 Art. 171 ter (1) h

Country

Latvia

Act

Copyright law with amending laws of 06.04.2000. with amendments of law of 6 March 2003; 22 April 2004; 8 February 2007 and 16 December 2007.

I. General Provisions

The Scope of the Act

Copyright to works that have or have not been communicated in Latvia, but which exist in Latvia in any material form, shall belong to the authors or their heirs, as well as to other successors in title.⁶⁴³ Works are specified as the results of an author's creative activities in the literary, scientific or artistic domain, irrespective of the mode or form of its expression and its value.⁶⁴⁴

Further specifications are given for works with joint authorship⁶⁴⁵, a compilation of works⁶⁴⁶ and anonymous works or use of pseudonym⁶⁴⁷.

Reproduction

Reproduction means the making of one or more copies, by any means and in any form and scale, fully or partially, of an object of copyright or neighbouring rights, also short-term or long term storage in electronic form of an object of copyright or neighbouring rights or a part thereof, as well as the making of three-dimensional copies of a two-dimensional object or two-dimensional copies of a three-dimensional object.⁶⁴⁸

Communication of the Work to the Public

Communication to the public means any action by means of which, either directly or through a relevant technical device, a work, performance, phonogram or broadcast is made available to the public.⁶⁴⁹ An author may also make the work available to the public by wire or by other means, so that it is accessible in an individually selected location and at an individually selected time.⁶⁵⁰

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁶⁵¹ If the country, which the work is created in, in accordance with Berne conventions Art. 5 (4) is not a European Union member and the author of the work is not a European Union citizen, the term of

643 Art. 3 (1)

644 Art. 1

645 Art. 9

646 Art. 10

647 Art. 8

648 Art. 1 (17)

649 Art. 1 (14)

650 Art. 15 (7)

651 Art. 36 (1)

protection in this work in the European Union ends when the term of protection as given by the original country expires.⁶⁵²

A work published anonymously or under a pseudonym shall be in effect for 70 years from the moment when it has legally become available to the public. If during that time the author of such work reveals his or her identity, author's rights shall run until 70 years after death.⁶⁵³

In case of co-authorship rights shall run for the duration of the lives of all the co-authors and for 70 years after the death of the last surviving co-author.⁶⁵⁴

As to authors, whose works were prohibited in Latvia or the use of which was restricted from June 1940 to May 1990, the years of prohibition or restriction shall be excluded from the term of the copyright.⁶⁵⁵

Any person, who after expiration of a copyright lawfully publishes or communicates to the public a previously unpublished work, shall acquire rights which are equivalent to the economic rights of an author and shall be in effect for 25 years from the first publication or the communicating to the public of the work.⁶⁵⁶

Works in respect of which copyright has expired may be freely used by any person, observing the right of the author to a name.⁶⁵⁷

Neighbouring rights for performers and their fixed performances, phonogram producers, film producers and broadcasting organisations are protected for 50 years.⁶⁵⁸

II. Free Use of the Work / Limitations to the Copyright

Free use is defined as the use of a work of an author without the consent of the author and without remuneration.⁶⁵⁹ The Latvian Copyright Act also includes the three-step test (The restrictions on the economic rights of an author referred to in this Chapter shall be applied in such a way that they are not contrary to the provisions for normal use of the work of an author and may not unjustifiably limit the lawful interests of the author)⁶⁶⁰ and directs courts not to interpret limitations in an extensive manner.⁶⁶¹

Citation

If the title of the work and the name of the author are indicated, it is permitted to reproduce works communicated to the public and published in the form of quotations and fragments for scientific, research, polemical, critical purposes, as well as use in news broadcasts and reports of current events to the extent justified by the purpose.⁶⁶²

652 Art.36(2)

653 Art. 37 (2)

654 Art. 37 (3)

655 Art. 37 (4)

656 Art. 37 (7)

657 Art. 39 (1)

658 Art. 55 (1-4)

659 Art. 19

660 Art. 18 (2)

661 Art. 18 (3)

662 Art. 20 (1)

Education

If the title and name of the author of the work are indicated, it is permitted to use communicated or published works or fragments of them in textbooks which are in conformity with educational standards, in radio and television broadcasts, in audio-visual works, in visual aids and the like, which are specially created and used in the face-to-face teaching and research process in educational and research institutions for non-commercial purposes to the extent justified by the purpose of their activity. These provisions do not apply to computer programs.⁶⁶³

Libraries, museums & archives

If a user of the work has the right to use the work freely as specified in the Copyright Act (as do libraries and archives, copyright shall not be considered infringed if a work of an author is used without the consent

of the author and without remuneration pursuant in case a work is reproduced to meet the needs of libraries and archives)⁶⁶⁴. In case the beneficiary of free use can not implement his rights due to the effective technological measures used by the author, the user has the right to request that the author gives access to such works taking into account the restrictions of the rights of an author. The author may refuse to provide such a possibility if the use of the work is contrary to the three-step test. If the user of the work and the author cannot reach an agreement, they may apply to a mediator.⁶⁶⁵

All libraries and archives may, without author's consent, without paying any remuneration to the author and when their intention is non-commercial, make one single copy, only if it is impossible to obtain a copy in another acceptable manner. Furthermore, if reproduction is repeated, it must occur in separate and mutually unrelated cases. The purpose of this reproduction must be to preserve a particularly valuable work or to replace for a particular library's or another library's or archive's permanent collection a copy which has been lost, damaged or become unusable. These provisions do not apply to computer programs.⁶⁶⁶

Closed network display

The author of a lawfully disclosed work, except for databases, can not prohibit the communication of a work by libraries, archives or museums to the public for purposes of research and private study, if this is done for non-commercial purposes, and when this takes place through dedicated computer terminals by using only especially protected internal networks.⁶⁶⁷

Art in the public space

Copyright shall not be considered infringed if a work of an author is used without the consent of the author and without remuneration if a use is made of a work that is publicly accessible or on display.⁶⁶⁸

It is permitted to use images of works of architecture, photography, visual arts, design, as well as of applied arts, permanently displayed in public places, for personal needs and as information in news

663 Art. 21 (1,2)

664 Art. 19 (1) 4

665 Art. 18 (4,5)

666 Art. 23 (1,2)

667 Art. 23 (1,2)

668 Art. 19 (1) 6

broadcasts or reports of current events, or include in works for non-commercial purposes. That which is referred to in this Section shall not apply to cases when the image of a work is an object for further repetition of the work, for broadcast by broadcasting organisations or for the purpose of commercial use of the image of a work.⁶⁶⁹

Portrait

No specifications for portrait rights have been indicated.

III. Database

A database is defined as a collection of independent works, data or other materials, which are arranged in a systematic or methodical way and are individually accessible by electronic or other means.⁶⁷⁰ Databases of which the creation, obtaining, verification or presentation has required a substantial qualitative or quantitative investment (financial resources or consumption of time and energy), whether or not they are the objects of copyright shall be protected.⁶⁷¹

Maker of database

The maker of such database (in the creation, verification, and formation of which there has been substantial qualitative or quantitative investment) is the natural or legal person which has undertaken initiative and the investment risk regarding the making of a database.⁶⁷²

The maker of a database has the right to prevent extraction (the permanent or short-term (temporary) transfer of all or a substantial part of the contents of a database to another location by any means or in any form) and re-use (any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by rental, by providing on-line or other forms of transmission).⁶⁷³

Conditions for extraction and copy

A lawful user of a database or of a copy thereof may perform any action, necessary to access the contents of the databases and its use. If the lawful user is authorised to use only part of the database, the above-mentioned provision shall apply only to that part.⁶⁷⁴

Without the consent of the maker of a database which is available to the public the lawful users of a database may extract the contents of a non-electronic database for personal use and extract a substantial part of the contents of a database for the purposes of education or scientific research, mandatorily indicating the source, moreover only to the extent necessary for the non-commercial purpose to be achieved.⁶⁷⁵

Terms of protection

669 Art. 25 (1, 2)

670 Art. 1 (3)

671 Art. 5 (3)

672 Art. 57 (1)

673 Art. 57 (2)

674 Art. 31 (1)

675 Art. 59 (1)

The rights specified in the paragraphs ‘Maker of database’ above shall run for 15 years from the day when the formation of a database was completed.⁶⁷⁶

If any changes that may be regarded as qualitatively or quantitatively substantial are made in the contents of the database, as well changes in it resulting from the accumulation of successive additions, deletions or changes as a result of which it may be considered that a new investment which may be regarded as qualitatively or quantitatively substantial, has been made, such database has the right to its own term of protection (for 15 years).⁶⁷⁷

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Technological protection measures are defined as protection measures (technologies, devices or the components thereof) used by a right holder, as well as a maker of a database, which are normally used in order to restrict or prevent such activities with an object of copyright or neighbouring rights, as well as a database, which are not authorised by the right holder, as well as the maker of the database. Technological measures shall be deemed effective where the right holder, as well as the maker of a database control the use of an object of copyright or neighbouring rights, as well as a database through the application of an access control or a protection process (with encryption, scrambling or other transformation of the object of copyright or neighbouring rights or database work or a copy control mechanism, which achieves the protection objective).⁶⁷⁸ The destruction or circumvention of technological measures is prohibited.⁶⁷⁹

Mediation

(See paragraph ‘Libraries, archives and museums’) If a user of the work has the right to use the work freely as specified in the Copyright Act (as do libraries and archives: copyright shall not be considered infringed if a work of an author is used without the consent of the author and without remuneration pursuant in case a work is reproduced to meet the needs of libraries and archives)⁶⁸⁰, but the beneficiary cannot implement these rights due to the effective technological measures used by the author, the user has the right to request that the author gives access to such works taking into account the restrictions of the rights of an author. The author may refuse to provide such a possibility if the use of the work is contrary to the three-step test. If the user of the work and the author cannot reach an agreement, they may apply to a mediator.⁶⁸¹

The Protection of the Rights Management Data

Rights management information is defined as information provided by a right holder, as well as a maker of a database, which identifies the right holder, as well as the maker of a database and the object, and information regarding the terms and conditions of use of the object of copyright or neighbouring rights, as well as databases, as well as any numbers or codes that represent such

676 Art. 60 (1)

677 Art. 60 (3)

678 Art. 1 (19)

679 Art. 68 (1)

680 Art. 19 (1) 4

681 Art. 18 (4,5)



information.⁶⁸² The extinguishing, amending or transforming of rights management data without the permission of the right holders is a violation of copyright and neighbouring rights.⁶⁸³

⁶⁸² Art. 1 (9)

⁶⁸³ Art. 68 (1)

Country

Luxembourg

Act

“Loi modifiée du 18 avril 2001 sur les droits d’auteur, les droits voisins et les bases de données”, includes Memorial A, no. 61 du 29 avril 2004.

I. General Provisions

The Scope of the Act

The Copyright Act protects literary works and original artistic works, in any genre and any mode of expression, including photographs, databases and computer programs.⁶⁸⁴

The author is, without proof of the contrary, the person under whose name the work is divulged. The editor of an anonymous work or work published under a pseudonym is deemed to represent the author.⁶⁸⁵

Further specifications are given for works created under employment⁶⁸⁶, audiovisual works⁶⁸⁷ and plastic arts⁶⁸⁸.

Reproduction

The author benefits from the exclusive right to reproduce his work, in any manner and under any form. This right includes the exclusive right to authorise the adaptation, arrangement or translation of his work; the integration of his work in, or extract it from, a database; the rental and lending of the original work and its copies; any form of distribution to the public by sale or otherwise of the original work and its copies.⁶⁸⁹

Communication of the Work to the Public

The author benefits from the exclusive right to authorise the communication of the work to the public by any procedure, including its transmission by wire or wireless means, by broadcasting, by satellite, by cable or network. This right includes the communication of the work to the public in a manner that they may access it in a place and time individually chosen by them.⁶⁹⁰

The Term of Protection

Author’s rights shall in general run for the life of the author and 70 years after his death.⁶⁹¹

A work published anonymously or under a pseudonym shall be in effect for 70 years from the moment when it has legally become available to the public. If during that time the author of such work reveals his or her identity, author’s rights shall run until 70 years after death.⁶⁹²

684 Art. 1 (1)

685 Art. 7

686 Art. 6

687 Art. 20-25

688 Art. 26-30

689 Art. 3

690 Art. 4

691 Art. 9 (1)

692 Art. 9 (3)

In case of co-authorship rights shall run for the duration of the lives of all the co-authors and for 70 years after the death of the last surviving co-author.⁶⁹³

Further specifications are given for audiovisual works.⁶⁹⁴

Any person, who after expiration of a copyright lawfully publishes or communicates to the public a previously unpublished work, shall acquire rights which are equivalent to the economic rights of an author and shall be in effect for 25 years from the first publication or the communicating to the public of the work.⁶⁹⁵

Neighbouring rights for performers⁶⁹⁶, producers or the first fixation of a film⁶⁹⁷, phonogram producers⁶⁹⁸ and broadcasting organisations⁶⁹⁹ are protected for 50 years.⁷⁰⁰

II. Free Use of the Work / Limitations to the Copyright

The Luxembourg Copyright Act includes the three-step-test: the reproduction and communication to the public of short fragments of work is permitted with the only goal to illustrate education or scientific research in appropriate measure, justified by the non-commercial nature of the goal and provided such use will be conform proper usage and, if possible, the source of the work and name of the author will be indicated.⁷⁰¹

The limitations listed below also apply to related rights⁷⁰² as far as the exceptions relating to quotations, broadcasters recordings, libraries and archives and education are concerned.

Quotation

The author of a lawfully disclosed work, except for databases, can not prohibit short quotations from the work, in original or translated form. The use must be justified by the critical, polemical, educational, scientific or informatory character of the work in which they are incorporated. The quotation must have a non-commercial nature and may not conflict with the normal exploitation of the work. The name of the author and source of the work have to be mentioned.⁷⁰³

Education

The author of a lawfully disclosed work, except for databases, can not prohibit the reproduction and communication to the public of short fragments of works for the sole purpose of illustration. The use must be justified by the non-commercial purpose and consistent with fair practice. The name of the author and source of the work have to be mentioned.⁷⁰⁴

693 Art. 9 (2)

694 Art. 9 (2)

695 Art. 9 (4)

696 Art. 45 (2)

697 Art. 45 (2)

698 Art. 45 (2)

699 Art. 54

700 Art. 55 (1-4)

701 Art. 10 (2)

702 Art. 46, 55

703 Art. 10 (1)

704 Art. 10 (2)

Libraries, museums & archives

The author of a lawfully disclosed work, except for databases, can not prohibit the reproduction of a work lawfully accessible by the public, if this access is provided by a public library, educational institution, museum or archive who are not operated for any direct or indirect commercial advantage. This reproduction is permitted only for the purpose of preserving heritage and carrying out work reasonably necessary to safeguard the work, provided that reproduction does not affect the normal exploitation of the work and does not harm the legitimate interests of the author. The exception includes the right to make a public communication of audiovisual works in order to publicize the cultural heritage, provided such communication is analogue and takes place inside the institution. The name of the author and source of the work have to be indicated.⁷⁰⁵

Closed network display

The author of a lawfully disclosed work, except for databases, can not prohibit the communication of a work to the public for purposes of research and private study, when this takes place through dedicated terminals, on site of the specified institutions (see above paragraph). The exception only allows the transmission of works not subject to purchase or licensing terms which are contained in existing collections. The name of the author and source of the work have to be indicated.⁷⁰⁶

Art in the public space

The author of a lawfully disclosed work, except for databases, can not prohibit the reproduction and communication of works situated in a publicly accessible place, in as far as these works do not make up the primary subject of the reproduction or the communication. The name of the author and source of the work have to be indicated.⁷⁰⁷

Portrait

No specifications for portrait rights have been indicated.

III. Databases

A database is defined as a collection or compilation of works or other independent elements, presented in a systematic or methodical manner and individually accessible by electronic means or in another way.

Databases who, by arrangement of their elements, make up a intellectual creation by their author, are protected by copyright. This protection does not extend to computer programmes, needed for thecreation, functioning or consultation of the database.⁷⁰⁸

Database creator

The creator of a database is the person who undertakes the initiative to invest reasonable effort in the creation of a database.⁷⁰⁹

The creator of a database can prohibit the extraction (the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form) or re-

705 Art. 10 (10)

706 Art. 10 (14)

707 Art. 10 (7)

708 Art. 1 (2)

709 Art. 67 (2)

utilization (any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission) of the a substantial part or the entirety of the content of the database.⁷¹⁰

Conditions for extraction and re-utilization

The author of a database can not prevent acts by the legitimate user of the whole or a part of the database, or copies of it, when these are necessary for accessing the content and for its normal use. Exceptions will be made for uses as specified in the above paragraphs (such as use by libraries, archives and museums).⁷¹¹

The creator of a database which is made available to the public in whatever manner may not prevent a licensed user of the database from extracting or re-utilizing insubstantial parts of its contents for any purpose whatsoever, as long as the licensed user does not perform acts which conflict with the normal exploitation of the database or unreasonably prejudice the legitimate interests of the creator of the database.⁷¹²

Term of protection

The right provided for in the paragraph ‘Database creator’ shall expire 15 years from the first of January of the year following the date of completion of the making of the database, or if made available to the public in whatever manner before expiry of the said period, such a right shall expire 15 years from the first of January of the year following the date when the database was first made available to the public.

In case any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, this will lead to the creation of a new database, which shall be entitled from that moment to its own term of protection of 15 years.⁷¹³

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Technological measures are defined as any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the right holder of any copyright or neighbouring right or the *sui generis* rights as provided for by this Act. Technological measures shall be deemed “effective” where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the protection objective.⁷¹⁴

It is prohibited to circumvent any effective technological measure, by a person so doing this in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.⁷¹⁵

710 Art. 67 (1)

711 Art. 10bis

712 Art. 67bis (1)

713 Art. 69

714 Art. 71ter

715 Art. 71quater

The Copyright Act excludes the application of these statements to technological measures used in connection with computer programs.⁷¹⁶

Mediation Procedure

Notwithstanding the juridical protection of technological measures, the right holders have to take the necessary measures to guarantee access to the lawful beneficiaries of the protected work, such as libraries, archives and the like (see paragraph on copyright limitations for libraries).⁷¹⁷

In the case where the right holders will not remove the technological protection measures for these beneficiaries, the beneficiaries may undertake action, following the procedures hereto as mentioned in the Copyright Act.⁷¹⁸

The Protection of the Rights Management Data

Rights-management information is defined as any information provided by right holders which identifies the work or other subject matter referred to in this Act, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.⁷¹⁹

Copyright, neighbouring rights and *sui generis* rights are infringed by any person who, without the licence of the copyright owner or right holder, knowingly performs the removal or alteration of any electronic rights-management information.⁷²⁰

716 Art. 71sexies

717 Art. 71quinquies

718 Art. 81

719 Art. 71septies

720 Art. 71octies

Country

Malta

Act

Copyright Act of Malta, Cap. 415, No. XIII (2000), as amended through No. IX (2003)

I. General Provisions

The Scope of the Act

Artistic, literary and musical works, having an original character and reduced to material form and audiovisual works and databases with exclusion of their contents shall be eligible for copyright.⁷²¹

It shall not be lawful for any person, including the assignee of the copyright or a licensee thereunder, without the author's consent, to mutilate, modify, distort or subject to any other derogatory action any work during its term of copyright in a way prejudicial to the honour or reputation of the author.⁷²²

Where work is done jointly copyright shall apply jointly in to all authors or contributors.⁷²³

Copyright shall be conferred on every work which is eligible for copyright and which is made or first published by a person domiciled or resident or a body of persons incorporated in Malta or in a State in which such works are protected under an international agreement to which Malta is also a party.⁷²⁴

Reproduction

Reproduction is defined as the making of one or more copies in any material form of a literary, musical or artistic work, audiovisual work or sound recording and includes storing such work in any medium by electronic means.⁷²⁵

Communication of the Work to the Public

Communication to the public is defined as the transmission of a work by wire or wireless means and includes the making available to the public of the work in such a way that members of the public may access the work from a place and at a time individually chosen by them. The mere provision of physical facilities for enabling or making of a communication does not in itself amount to an act of communication to the public save in cases of satellite broadcast where encrypted transmission not available to the public shall not be deemed to be a copyright infringement.⁷²⁶

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁷²⁷

In the case of an anonymous or pseudonymous literary, musical or artistic work, or in the case of a collective work, the copyright in the work subsists until the end of the expiration of 70 years from the end of the year in which it was lawfully made available to the public or after the end of the year

721 Art. 3 (1)

722 Art. 12 (1)

723 Art. 4 (1)

724 Art. 5 (1)

725 Art. 2

726 Art. 2, 7

727 Art. 4 (2)

in which the work was made if it has not been made available to the public provided that such pseudonym is one in which author may absolutely son be identified. In such case time runs from date of death of author.⁷²⁸

Further specifications are given for works with joint authorship⁷²⁹ and collective works⁷³⁰. In the case of a person who for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work the copyright protection of which has expired, he shall benefit from a protection equivalent to the economic rights covered by copyright, limitedly for a period of 25 years running from date of such publication or communication.⁷³¹

Neighbouring rights for performers⁷³², producers of sound recordings and audiovisual works⁷³³ and broadcasters⁷³⁴ are protected for 50 years running from date of communication or publication.

II. Free Use of the Work / Limitations to the Copyright

The Copyright Act of Malta interprets free use restrictively. The exceptions and limitations provided for in the article of the act dealing with free use shall only be applied in such particular cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holder.⁷³⁵

Quotation

It is permitted to reproduce, translate and distribute or communicate to the public quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, as long as, unless this is impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purposes.⁷³⁶

Education

It is permitted to reproduce, translate, distribute or communicate to the public a work for the sole purpose of illustration for teaching or scientific research only to the extent justified by the non-commercial purpose to be achieved, and as long as the source, including the author's name, is, unless this is impossible, indicated.⁷³⁷

Libraries, museums & archives

728 Art. 4 (3)

729 Art. 4 (4)

730 Art. 4 (3)

731 Art. 4 (5)

732 Art. 14

733 Art. 16

734 Art. 18

735 Art. 9 (3)

736 Art. 9 (1) k

737 Art. 9 (1) h

Publicly accessible libraries, educational establishments, museums, or archives may freely perform specific acts or reproduction, which are not for direct or indirect economic or commercial advantage.⁷³⁸

Closed network display

It is permitted to communicate to the public, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments, being publicly accessible libraries, educational establishments and museums, of works and other subject-matter, not subject to purchase or licensing terms, which are contained in their collections.⁷³⁹

Art in the public space

It is permitted to include in a communication to the public, the making of a graphic representation and the making of a photograph or film, of a work of architecture or sculpture or similar works made to be located permanently in public places.⁷⁴⁰

Portrait

No specifications for portrait rights have been indicated.

III. Databases

A database is defined a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means without it being necessary for these materials to have been physically stored in an organized manner but does not extend to computer programs used in the making or operation of a database accessible by electronic means comprised within the term “computer program”.⁷⁴¹

Database creator

The creator of a database who can show that there has been qualitatively or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents of the database shall have, irrespective of the eligibility of that database or its contents for protection by copyright or by other rights, the right to authorise or prohibit acts of extraction or re-utilization of its contents, in whole or in substantial part, evaluated qualitatively or quantitatively.⁷⁴²

Conditions for extraction and re-utilization

The creator of a database which is made available to the public in whatever manner may not prevent a licensed user of the database from extracting or re-utilizing insubstantial parts of its contents for any purpose whatsoever, as long as the licensed user does not perform acts which conflict with the normal exploitation of the database or unreasonably prejudice the legitimate interests of the creator of the database or in any way cause prejudice to the holder of a copyright or

738 Art. 9 (1) d

739 Art. 9 (1) v

740 Art. 9 (1) p

741 Art. 2

742 Art. 25

neighbouring right in respect of the works or subject matter contained in the database and any contractual provisions running counter to this proviso shall be null and void.⁷⁴³

A licensed user may, without the authorization of the creator of a database made available to the public in whatever manner, extract (the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form) or re-utilize (any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission) a substantial part of its contents for the purpose of extraction for private use in the case of a non-electronic database; extraction for the purposes of illustration for teaching or for scientific research to the extent justified by the non-commercial purpose to be achieved provided the source is indicated; extraction or re-utilization for the purposes of public security or an administrative or judicial procedure.⁷⁴⁴

Term of protection

The right provided for in the paragraph ‘Database creator’ shall expire 15 years from the first of January of the year following the date of completion of the making of the database, or if made available to the public in whatever manner before expiry of the said period, such a right shall expire 15 years from the first of January of the year following the date when the database was first made available to the public.

In case any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, this will lead to the creation of a new database, which shall be entitled from that moment to its own term of protection of 15 years.⁷⁴⁵

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Technological measures are defined as any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the right holder of any copyright or neighbouring right or the *sui generis* rights as provided for by this Act. Technological measures shall be deemed “effective” where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the protection objective.⁷⁴⁶

Copyright, neighbouring rights and *sui generis* rights are infringed by any person who, without the licence of the copyright owner or right holder does anything which circumvents any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective.⁷⁴⁷

743 Art. 26 (1)

744 Art. 26 (2)

745 Art. 27

746 Art. 2

747 Art. 42 (1) c

Mediation Procedure

Where the application of any effective technological measure to a copyright work prevents any beneficiary of an exception provided for in the Copyright Act (among others the reproductions on paper or any similar medium quotation for the purpose of criticism or review⁷⁴⁸, ephemeral recordings by broadcasters⁷⁴⁹, limitations applying to specific acts of reproduction by public libraries, educational establishments or archives⁷⁵⁰, reproductions of broadcasts made by social institutions⁷⁵¹, use of a work for the purpose of illustration for teaching or scientific research⁷⁵²) from benefiting from that exception, the right holder shall make available to the beneficiary the means of benefiting from that exception, to the extent necessary to benefit from that exception or limitation. These provisions do not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.⁷⁵³

The Protection of the Rights Management Data

Rights-management information is defined as any information provided by right holders which identifies the work or other subject matter referred to in this Act, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.⁷⁵⁴

Copyright, neighbouring rights and *sui generis* rights are infringed by any person who, without the licence of the copyright owner or right holder, knowingly performs the removal or alteration of any electronic rights-management information.⁷⁵⁵

748 Art. 9(1) b

749 Art. 9 (1) e

750 Art. 9 (1) d

751 Art. 9 (1) f

752 Art. 9 (1) h

753 Art. 42 (2) a, b

754 Art. 2

755 Art. 42 (1) f

Country

Poland

Act

Copyright and Related Rights Act of Poland, No. 90 (2006), as amended through Alteration of the Law on Copyrights and Neighbouring Rights No 121 (2006), 21 (2006), 94 (2006), 99 (2007), 181 (2007)

I. General Provisions

The Scope of the Act

The subject matter of copyright shall be any manifestation of the creative activity of individual nature, established in any form, irrespective of its value, designation or manner of expression (work).⁷⁵⁶ ‘Works’ are specified in more detail.⁷⁵⁷

The author shall be the owner of the copyright unless the Copyright Act states otherwise.⁷⁵⁸

Further specifications are given for works with co-authorship⁷⁵⁹, joint works⁷⁶⁰, collective works⁷⁶¹ and works created under employment⁷⁶².

The Copyright Act also indicates geographic and national specifications in order to benefit from copyright protection.⁷⁶³

Reproduction

Reproduction is defined as creating in particular, by a specific technique, work copies, including printing technique, reprographic, magnetic recording and digital technique.⁷⁶⁴

Reproduction right pertains to neighbouring rights holders such as performing artists⁷⁶⁵, phonogram and videogram producers⁷⁶⁶ and radio and television organisations,⁷⁶⁷ first editions and scientific, critical editions publishers⁷⁶⁸

Communication of the Work to the Public

The communication of the work is defined as its communication via sound, image or combined sound and image carriers, on which the work has been stored, or by way of using devices intended for receiving a radio or television program service in which the given work is broadcast.⁷⁶⁹

756 Art. 1 (1)

757 Art. 1 (2)

758 Art. 8 (1)

759 Art. 9

760 Art. 10

761 Art. 11

762 Art. 12

763 Art. 5

764 Art. 50 (1)

765 Art. 86

766 Art. 94

767 Art. 97 (1)

768 Art. 99

The Act also refers to communication of the works to the public in a manner allowing every person to have access to such works in a place and at a time of his own choice.⁷⁷⁰

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁷⁷¹

In case of multiple authors, this is counted from the death of the last living co-author.⁷⁷²

In case of an anonymous work or work under pseudonym: counted from the date of the first dissemination of the work, unless the pseudonym adopted by the author leaves no doubt as to his identity or the author has disclosed his identity.⁷⁷³

In case of a piece of work with respect to which the author's economic rights are, under statutory law, enjoyed by a person other than the author – from the date of dissemination of the work and if the work has not been disseminated from the date of establishment thereof.⁷⁷⁴

The term of protection in audiovisual works starts from the death of the latter of the persons mentioned: the main director, the screenwriter, the author of dialogues, and the composer of music for that audiovisual work.⁷⁷⁵

Neighbouring rights for performers, producers of phonograms and videograms, broadcasting organisations shall expire within 50 years following the year in which a given artistic performance was established. However, if within such time a fixation of such performance was published or was publicly presented, the period of protection shall be calculated from such events and if both of them occurred from the one which happened earlier.⁷⁷⁶

II. Free Use of the Work / Limitations to the Copyright

There is a somewhat similar statement to the Berne three-step-test in Article 35: The permitted use must not infringe the normal use of the work or violate the rightful interests of the author.⁷⁷⁷

No definition of 'free use' has been indicated.

Works may be used within the scope of the permitted use as defined in the cases below, provided, that the full name of the author of the work and the source is identified. The identification of the author of the work and the source should take into account the existing possibilities of retrieving such information. The author shall have no right to receive remuneration unless the Act provides otherwise.⁷⁷⁸

Quotation

769 Art. 6 (9)

770 Art. 21

771 Art. 36

772 Art. 36 (1)

773 Art. 36 (2)

774 Art. 36 (3)

775 Art. 36 (4)

776 Art. 89

777 Art. 35

778 Art. 34

It shall be permitted to quote, in works constituting an independent whole, fragments of disseminated works or minor works in full, within the scope justified by explanation, critical analysis, teaching or the rights governing a given kind of creative activity.⁷⁷⁹

Education

It shall be permitted to publicly perform, free of charge, the disseminated works during religious ceremonies, school and academic events, or official national ceremonies, except for advertising, promotional, or election events, unless they are organized directly or indirectly for profit-gaining purposes and unless the performers receive remuneration.⁷⁸⁰

For teaching and research reasons it shall be permissible to include disseminated minor works or excerpts from larger works in textbooks and reading books. The disseminated minor works or fragments of major works may be published in anthologies for didactic and research purposes.⁷⁸¹

Research and educational institutions shall be allowed, for teaching purposes or in order to conduct their own research, to use disseminated works in original and in translation, and to make copies of fragments from the disseminated work for the same purpose.⁷⁸²

Libraries, museums & archives

Libraries, archives and schools may provide free access to copies of the disseminated works within the scope of their statutory objectives, prepare or order the preparation of single copies of disseminated works in order to supplement, maintain and/or protect their collections.⁷⁸³

Closed network display

Libraries, archives and schools may make their collections available for research or studying purposes via terminals located in the seats of these institutions.⁷⁸⁴

Art in the public space

It is be permitted to disseminate the works permanently exhibited on commonly accessible public roads, streets, squares or gardens although not for the same use.⁷⁸⁵

Portrait

The dissemination of an image shall require the permission of the person presented in that image. Unless there is a clear reservation, such permission shall not be required if such person has received the agreed price for posing. The permission shall not be required for the dissemination of the image of a commonly known person, if such image has been made in connection with his/her performance of public functions and, in particular, political, social or professional functions; of a person constituting only a detail of a whole, such as a meeting, a landscape, or a public event.⁷⁸⁶

779 Art. 29 (1)

780 Art. 31

781 Art. 29 (2), 29 (2)-1

782 Art. 27

783 Art. 28 (1,2)

784 Art. 28 (3)

785 Art. 33 (1)

786 Art. 81

III. Databases

No definition of ‘database’ has been indicated.

Databases which have the properties of a work shall be covered by copyright even if they contain unprotected materials, provided that their selection, arrangement or composition are creative, without detriment to the rights of the used works.⁷⁸⁷

Database creator

In the case of a database which has the properties of a work the author shall give his permission to the adaptation of such database.⁷⁸⁸

Conditions for extraction and re-utilization

The development or reproduction of the database constituting a work, made by a lawful user of the database, or a copy thereof, shall not require the permit of the author of the database, if it is necessary for the access to the content of the database and the regular exploitation of its contents. If the user is authorized to use only a part of the database, this provision shall refer only to that part.⁷⁸⁹

Term of protection

No separate term of protection for the rights of the creator of a database has been indicated.

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Technical protection measures are defined as all technologies, devices or their components intended for preventing actions or limiting actions taken for the purpose of using the works or performances contrary to applicable laws.⁷⁹⁰

Effective technical protection measures are defined as technical protection measures, which allow eligible entities to supervise the use of a protected work or performance by way of applying an access code or a security mechanism, including in particular encoding, interfering, or any other transformation of a work or a performance or a mechanism of supervising the reproduction, which fulfil the protective goal.⁷⁹¹

In the event of eliminating or circumventing technical protection measures safeguarding against the access to, reproduction or dissemination of the work if such actions are aimed at using the work illegally, the author may request from the person who infringed his economic rights to cease such infringement, to eliminate the consequences of the infringement, to repair the inflicted damage on the general terms or by payment of double or where the infringement is culpable, triple the amount of respective remuneration that would have been due as of the time of claiming it in exchange for the right holder’s consent for the use of the work, to render the acquired benefits.⁷⁹² Moreover, the right holder may demand a single or multiple announcements of a press declaration having the proper wording and form, or communicating to the public all or a part of a court pronouncement

787 Art. 3

788 Art. 2 (2)

789 Art. 17.1

790 Art. 6 (10)

791 Art. 6 (11)

792 Art. 79

issued in the examined case, in the manner and within the scope defined by the court ; payment by a person who breached the author's economic rights of an appropriate sum of at least double the probable value of the benefits received by the offender of the infringement in favour of the Fund for Promotion of Creative Activity, provided that the infringement was culpable and has been committed within the scope of economic activity performed by the offender in the name of a third party or in his own name even if on account of a third party.

Mediation Procedure

No beneficiaries for copyright limitations concerning technological protection measures have been indicated.

No mediation procedure for the beneficiaries of such limitations has been indicated.

The Protection of the Rights Management Data

Rights-management information is defined as information that identifies the work, the author, holder of copyright, or information about the conditions of use of a work, provided that such information has been attached to the copy of the work or is passed in connection with its dissemination, including the identification codes.⁷⁹³

In the event of unauthorized removal or modification of any electronic information concerning the management of copyright or related rights, and in the event of a conscious dissemination of works with such information being illegally removed or modified; the may request from the person who infringed his economic rights to cease such infringement, to eliminate the consequences of the infringement, to repair the inflicted damage on the general terms or by payment of double or where the infringement is culpable , triple the amount of respective remuneration that would have been due as of the time of claiming it in exchange for the right holder's consent for the use of the work, to render the acquired benefits.⁷⁹⁴ Moreover, the right holder may demand a single or multiple announcements of a press declaration having the proper wording and form, or communicating to the public all or a part of a court pronouncement issued in the examined case, in the manner and within the scope defined by the court ; payment by a person who breached the author's economic rights of an appropriate sum of at least double the probable value of the benefits received by the offender of the infringement in favour of the Fund for Promotion of Creative Activity, provided that the infringement was culpable and has been committed within the scope of economic activity performed by the offender in the name of a third party or in his own name even if on account of a third party.⁷⁹⁵

793 Art. 6 (12)

794 Art. 79

795 Art. 79

Country

Romania

Act

Law on Copyright and Neighbouring Rights (No. 8 of March 14, 1996), including amendments by Law no. 285/2004, GEO no.123/2005 and Law no. 329/2006.

I. General Provisions

The Scope of the Act

The copyright in a literary, artistic or scientific work and in any similar work of intellectual creation shall be recognized and guaranteed by this Act. That right vests in the author and embodies attributes of moral and economic character.⁷⁹⁶

The natural person or persons who created the work shall be the author thereof.⁷⁹⁷

The subject matter of copyright shall be original works of intellectual creation in the literary, artistic, or scientific field, regardless of their manner of creation, specific form or mode of expression and independently of their merit and purpose. An extensive, but not exhaustive list of types of works is indicated in the Copyright Act.⁷⁹⁸

Further specifications are given for presumption of authorship⁷⁹⁹, works published anonymously or under a pseudonym⁸⁰⁰, works of joint authorship⁸⁰¹ and collective works⁸⁰².

Reproduction

The use of a work gives rise to distinct and exclusive economic rights of the author to authorize or to prohibit, among which the reproduction of the work.⁸⁰³

Reproduction is defined as the making, in whole or in part, of one or more copies of a work, directly or indirectly, temporarily or permanently, by any means and under any form, including the making of any sound or audiovisual recording of a work, as well as its permanent or temporary storage by electronic means.⁸⁰⁴

Communication of the Work to the Public

Communication to the public is defined as any communication of a work, directly or by any technical means, made in a place opened for public or in any other place where a number of persons exceeding the normal circle of the members of a family and of its acquaintances assemble, including stage performance, recitation or any other public form of performance or direct presentation of the work, public display of works of plastic art, of applied art, of photographic art and of architecture, public projection of cinematographic and of other audiovisual works, including of works of digital art, presentation in a public place, by means of sound or audiovisual recordings, as well as presentation in a public place, by any means, of a broadcast work. Any communication of

796 Art. 1 (1)

797 Art. 3 (1)

798 Art. 7

799 Art. 4 (1)

800 Art. 4 (2)

801 Art. 5 (1)

802 Art. 6 (1)

803 Art. 13 (a)

804 Art. 14

a work by wire or wireless means, including by making the works available to the public, via Internet or other computer networks, so that any member of the public to have access, from anywhere or at any moment individually chosen, shall also be considered as communication to the public.⁸⁰⁵

The use of a work gives rise to distinct and exclusive economic rights of the author to authorize or to prohibit communication to the public, directly or indirectly, of the work, by any means, including by making the work available to the public, in such a way that members of the public may access them from a place and at a time individually chosen by them.⁸⁰⁶

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁸⁰⁷

If the work is created over a period of time in instalments, episodes, volumes or any other form of sequence, the term of protection shall be calculated for each such element.⁸⁰⁸

The person who, after the copyright protection has expired, legally discloses for the first time a previously unpublished work to the public shall enjoy protection equivalent to that of the author's economic rights. The duration of the protection of those rights shall be 25 years, starting at the time of the first legal disclosure to the public.⁸⁰⁹

Works disclosed under a pseudonym or without a mention of the author's name shall be protected for 70 years from the date on which they were disclosed to the public.⁸¹⁰ Where the author's identity is revealed to the public before the term mentioned above expires, or the pseudonym used by the author leaves no doubt about his identity, the general provisions shall apply.⁸¹¹

Further specifications are given for the term of economic rights in works of joint authorship⁸¹² and in collective works⁸¹³.

Neighbouring rights of performers⁸¹⁴, producers of sound recordings⁸¹⁵, producers of audiovisual recordings⁸¹⁶ and television and radio broadcasting organizations⁸¹⁷ are protected for 50 years from the date of the performance or the date of the first fixation (whichever comes first).

II. Free Use of the Work / Limitations to the Copyright

Free use is defined as use of a work already disclosed to the public that is permitted without the author's consent and without payment of remuneration.⁸¹⁸

805 Art. 15 (1)

806 Art. 13 (f)

807 Art. 25 (1)

808 Art. 24 (2)

809 Art. 25 (2)

810 Art. 26 (1)

811 Art. 26 (2)

812 Art. 27 (1)

813 Art. 28

814 Art. 102 (1)

815 Art. 106 (1)

816 Art. 1064 (1)

817 Art. 114

818 Art. 33 (1)

The Romanian Copyright Act includes the three-step-test: certain uses of a work already disclosed to the public shall be permitted without the author's consent and without payment of remuneration, provided that such uses conform to proper practice, are not contradictory with the normal exploitation of the work and are not prejudicial to the author or to the owners of the exploitation rights.⁸¹⁹

Romanian law is not a common law, thus the jurisprudence is not a source of law and the decision can be applied only to the specific case brought to justice. Moreover, there is a major lack of access to court decisions, generally speaking, which makes it impossible to estimate what are the views of Romanian judges in interpreting the copyright limitations chapter. Most of the Romanian doctrine⁸²⁰ sees these limitations as being "rigorously interpreted", thus they could not be extended by analogy.

In all cases provided for in the paragraphs below, indicating free use, the source, including the author's name, has to be indicated, unless this turns out to be impossible; in cases of works of plastic art, photographic or architectural works the place in which the original is found has to be indicated.⁸²¹

Quotation

It is allowed to use brief quotations from a work for the purpose of an analysis, commentary or criticism, or for illustration, to the extent justified by use thereof.⁸²²

Education

It is permitted to use isolated articles or brief excerpts from works in publications, television or radio broadcasts or sound or audiovisual recordings exclusively intended for teaching purposes and also the reproduction for teaching purposes, within the framework of public education or social welfare institutions, of isolated articles or brief extracts from works, to the extent justified by the intended purpose.⁸²³ Specific acts of reproduction are allowed if made by educational establishments which are not for direct or indirect economic or commercial advantage.⁸²⁴

The representation and execution of a work as part of the activities of educational establishments is permitted, exclusively for specific purposes and provided that both the representation or execution and the public's access are free of charge.⁸²⁵

Libraries, museums & archives

It is permitted to reproduce brief excerpts from works for information or research within the framework of libraries, museums, film archives, sound archives, archives of non-profit cultural or scientific public institutions; the complete reproduction of a copy of a work shall be allowed for the replacement of the sole copy in such an archive or library's permanent collection in the event of the destruction, serious deterioration or loss thereof.⁸²⁶ Specific acts of reproduction are allowed if

819 Art. 33 (1)

820 See V. Ros and others, - Copyright and Neighbouring Rights Treaty, All Beck, 2005 page 302

821 Art. 33 (4)

822 Art. 33 (1) (b)

823 Art. 33 (1) (c)

824 Art. 33 (1) (e)

825 Art. 33 (1) (g)

826 Art. 33 (1) (d)

made by publicly accessible libraries or museums, or by archives, which are not for direct or indirect economic or commercial advantage.⁸²⁷

Closed network display

There is no specific legal provision related to the communication (or making available) of a work to the public for libraries or the like within the premises or outside the premises (e.g. on their websites). Therefore libraries will need to ask for permission from the copyright holders, unless they can fit in one of the general exceptions provided in art 33 (2), e.g. using brief excerpts from press articles and radio or televised reportages, for informatory purposes on current events or brief excerpts of lectures, addresses, pleadings and other similar works that have been orally expressed in public, provided that these uses have the sole purpose of informing on the present; using entire works for the sole purpose of illustration for teaching or scientific research or for the benefit of people with disabilities, which are directly related to that disability and to the extent required by the specific disability.

Art in the public space

The reproduction, to the exclusion of any means involving direct contact with the work, distribution or communication to the public of the image of an architectural work, work of plastic art, photographic work or work of applied art permanently located in a public place is permitted, except where the image of the work is the main subject of such reproduction, distribution or communication, and if it is used for commercial purposes.⁸²⁸

Portrait

A photograph of a person, when made to order, may be published or reproduced by the person photographed or his successors without the author's consent, unless otherwise agreed.⁸²⁹

The distribution of a work containing a portrait shall require the authorization of the person represented in that portrait. Its author, owner or possessor shall not have the right to reproduce or exploit it without the consent of the person represented, or that of his successors for a period of 20 years after the death of the said person.⁸³⁰

Unless otherwise agreed, authorization shall not be required if the person represented in the portrait is a professional model or has received remuneration for the sitting.⁸³¹

Authorization is not necessary for the distribution of a work containing the portrait of a widely-known person, if the portrait was made on the occasion of that person's public activities and of a person where the representation of that person constitutes only a detail of a work representing an assembly, a landscape or a public function.⁸³²

III. Databases

A database is defined as a collection of works, data or of other independent elements, protected or not by copyright or neighbouring rights, arranged systematically or methodically and individually accessible by electronic means or in any other way. The protection provided for in the present

827 Art. 33 (1) (e)

828 Art. 33 (1) (f)

829 Art. 87 (1)

830 Art. 88 (1)

831 Art. 88 (2)

832 Art. 88 (3)

chapter does not apply to computer programs used for the making or operation of databases accessible by electronic means.⁸³³

Database creator

For the purposes of the present law, the creator of a database is the natural or legal person that has made a qualitatively and quantitatively substantial investment for the obtaining, verification or presentation of the contents of a database.⁸³⁴ The creator of a database has the exclusive economic right to authorize and prohibit the extraction (the permanent or temporary transfer of all or a substantial part, evaluated qualitatively or quantitatively), of the contents of a database to another medium by any means or in any form and/or re-utilization (any form of making available to the public all or a substantial part of the contents of a quantitative or qualitative apprised database by the distribution of copies, by renting, or other forms, including by making available to the public of the contents of the database so that anyone may access it in a place and time individually chosen by them) of the entire or of a substantial part of the database, evaluated qualitatively or quantitatively.⁸³⁵

Conditions for extraction and re-utilization

The creator of a database which is made available to the public through whatever manner may not prevent a lawful user of the database from extracting or re-utilizing insubstantial parts of its contents, for any purposes of the use whatsoever. Where the lawful user is authorized to extract or re-utilize only part of the database, the provisions of the present paragraph shall apply to that part.⁸³⁶

A lawful user of a database which is made available to the public through whatever manner may, without the authorization of its creator, extract or re-utilize a substantial part of its contents in the case of extraction for private purposes of the contents of a non-electronic database, in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved and in the case of extraction or re-utilization for the purposes of public order and national safety or an administrative or jurisdictional procedure.⁸³⁷

Term of protection

The rights of the Database creator shall run from the date of completion of the making of the database. The term of protection is 15 years from the first of January of the year following the date of completion of the database.⁸³⁸

Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for its own term of protection.⁸³⁹

833 Art. 1221 (2, 3)

834 Art. 1221 (4)

835 Art. 1222 (1)

836 Art. 1223 (1)

837 Art. 1223 (4)

838 Art. 1224 (1)

839 Art. 1224 (3)

IV. Infringement of Authors' Rights

Protection Against the Circumvention of Technological Measures

The author of a work, performer, producer of phonograms or of audiovisual recordings, radio or television broadcasting organization or the Database creator may institute technical measures of protection of the rights recognized by the present law.⁸⁴⁰ The Romanian law uses the term of “technical measure” and not “technological measures”. I guess a correct translation of “technical measures” could be Digital Rights Management.

Technical measures are defined as the use of any technology, of a device or component that, in the normal course of its normal operation, is destined to prevent or restrict the acts, which are not authorized by the owner of the rights acknowledged by the present law.⁸⁴¹

Technical measures shall be deemed effective where the use of a protected work or other subject-matter of protection is controlled by the owner of rights through application of an access control or protection process, such as encryption, coding, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.⁸⁴²

It shall be a penal crime when a person unlawfully produces, imports, distributes or rents, offers, in any way, for sale or rent, or possesses for commercial purposes, devices or components that allow the neutralization of the technological measures of protection or performs services which lead to the neutralization of some technological measures for protection, including in the digital environment.⁸⁴³

Mediation Procedure

Owners of copyrights that have instituted technical measures of protection must make available to the beneficiaries of the exceptions provided for in some of the free uses in art.33 and 38 the necessary means for the legal access to the work or any other object of protection. They have also the right to limit the number of copies made under the aforementioned conditions.⁸⁴⁴ This provision is not applied to the protected works made available to the public, according to the contractual clauses agreed between the parties, so that the members of the public to be permitted to have access to them in any place and at any time chosen, individually.⁸⁴⁵

There is no mediation procedure (or any other kind of Alternative Dispute Resolution System) foreseen by the Romanian law in order to provide or facilitate these exceptions. In fact breaching the article mentioned above is not even a misdemeanour. In order for the beneficiaries of the exceptions to make the copyright holders respect this article, if they don't do so on a bona fidae basis, a court action would have to be brought before the civil common law.

The Protection of the Rights Management Data

The owners of the rights recognized by the present law may provide, in electronic format, associated to a work or any subject-matter of protection, or in the context of their communication to the public, rights-management information.⁸⁴⁶

840 Art. 1385 (1)

841 Art. 1385 (2)

842 Art. 1385 (3)

843 Art. 143 (1)

844 Art. 1385 (4)

845 Art. 1385 (5)

846 Art. 1386 (1)



Rights-management information is defined as any information provided by the owners of rights which identifies the work or other subject-matter of protection by the present law, of the author or of other owner of rights, as well as the conditions and terms of use of the work or of any other subject-matter of protection, as well as any number or code representing such information.⁸⁴⁷

It shall be an penal crime when a person, without having the consent of the owners of rights and knowingly of having to know that this way permits, facilitates, causes or hides an infringement of a right provided for by the present law: removes, for commercial purposes, from the works or other protected products or modifies on them, any information under electronic form, on the applicable regime of copyright or of neighbouring rights.⁸⁴⁸

847 Art. 1386 (2)

848 Art. 143 (2)

Country

Russia

Acts

Civil Code of the Russian Federation, Fourth Part. Edited and translated by Peter B. Maggs and Alexei N. Zhiltsov. Moscow: Wolters Kluwer, 2008. (Further in the text the *Code*)

(In Russian: "ГРАЖДАНСКИЙ КОДЕКС РОССИЙСКОЙ ФЕДЕРАЦИИ" (ГК РФ)

Часть 4. от 18.12.2006 N 230-ФЗ (принят ГД ФС РФ 24.11.2006) (действующая редакция)

Federal Law "On Librarianship" #122-FZ, 22.08.04 with changes #183-FZ, 27.10.2008

(In Russian: Федеральный закон «О библиотечном деле» № 122-ФЗ от 22.08.04 с изменениями №183-ФЗ от 27.10.2008)

I. General Provisions

The Scope of the Act

Only the natural person, through whose creative labour a work is created, can be the original holder of intellectual rights.⁸⁴⁹ Intellectual rights shall extend to works of science, literature, and art; computer programmes; data bases; performances; phonograms; communication over the air or by cable of radio- or television transmissions (broadcast by organizations of over-the-air or cable broadcasting); inventions; utility models; industrial designs; achievements of breeding; integrated circuit layouts; secrets of production (know-how); firm names; trademarks and service marks; names of places of origin of goods; commercial designations.⁸⁵⁰ Further specifications are given for a collection of works⁸⁵¹, works with joint authorship⁸⁵² and anonymous works or use of pseudonym⁸⁵³.

Intellectual rights shall be recognized for the results of intellectual activity and means of individualization equated to them (results of intellectual activity and means of individualization), which include an exclusive right⁸⁵⁴ that is a property right; and, in the cases provided by the present *Code*, also personal nonproperty rights and other rights (droit de suite, right of access, and others).⁸⁵⁵

There is a special provision for the use of intellectual activities resulting in a complex object (cinema film, other audiovisual composition, theatre performance, multimedia product, united technology)⁸⁵⁶. In this case exclusive rights or licence contracts are obligatory for the use of any piece.

There are provisions on protection of intellectual rights⁸⁵⁷, personal nonproperty rights⁸⁵⁸ and exclusive rights⁸⁵⁹.

849 Art. 1228, 1257

850 Art. 1225 (1)

851 Art. 1228 (4), 1260

852 Art. 1258

853 Art. 1265

854 Art. 1229

855 Art. 1226

856 Art. 1240

857 Art. 1250

858 Art. 1251

Reproduction

The right of reproduction belongs to the author or any other right holder.

The right of reproduction means the right to manufacture one or more copies of a work or part of a work in any material form, including sound and video recordings, to manufacture one or more copies of a two-dimensional work in three dimensions, and to manufacture one or more copies of a three-dimensional work in two dimensions. Saving a work in the memory of a computer also counts as reproduction except temporary copies being an inherent part of the technological process aiming at lawful use of the work⁸⁶⁰.

Reproduction (reprographic reproduction) means facsimile reproduction of the originals by any technical means made not with the aim of edition. This does not include storage or reproduction of the said copies in electronic (including digital), optical or other machine-readable form except temporary copies needed for reproduction.⁸⁶¹

Communication of the Work to the Public

To communicate is publication, displaying, performance, broadcasting, communication by cable or other execution by means of which the works become accessible.

Publication is circulation of the copies of the work in any material form and in the number of copies enough for meeting public needs in accordance with the type of the work⁸⁶².

Intellectual rights on a work of science, literature and art are authors rights which include exclusive right over the work, author's right, right over the name, right for integrity of the work, right for communication to the public and some other rights including the right for remuneration, the right for recall, the right for the artist resale remuneration, the right for access of the author to artworks⁸⁶³.

The communication of the work to the public is explicitly an exclusive right of the author or any other legal right holder.

Promulgation (the right to communicate the work to the public for the first time or to agree for the first communication to the public) and the right to recall belong to the author. If the work was not promulgated during the authors' lifetime it may be promulgated by the exclusive rights holder after the death of the author if this is not against the author's will. The right to recall does not concern computer programmes, on-duty works and works included into complex objects⁸⁶⁴.

The Term of Protection

Term of protection are covered by Art. 1251 – 1254, 1270.

Author's rights shall in general run for the life of the author and 70 years after his death.⁸⁶⁵

Anonymous works and pseudonym works are protected for 70 years after the first legal communication to the public⁸⁶⁶.

⁸⁵⁹Art. 1252

⁸⁶⁰ Art. 1270

⁸⁶¹ Art. 1275 (2)

⁸⁶² Art. 1268 (1)

⁸⁶³ Art. 1255

⁸⁶⁴ Art. 1268, 1269

⁸⁶⁵ Art. 1281 (1)

⁸⁶⁶ Art. 1281 (2)

Exclusive right for the work, communicated to the public after the author's death and in 70 years after the death is in effect for 70 years after the communication⁸⁶⁷.

Neighbouring rights for execution⁸⁶⁸, phonogram⁸⁶⁹, broadcasting⁸⁷⁰ are protected for 50 years. Neighbouring rights for publication are protected for 25 years after communication of work for the public⁸⁷¹.

If the author was repressed and rehabilitated posthumously the exclusive right period is prolonged and the 70 years term is counted from the rehabilitation date⁸⁷².

If the author worked during the Great Patriotic War⁸⁷³ or took part in it the term of the exclusive right is prolonged for 4 years⁸⁷⁴.

II. Free Use of the Work / Limitations to the Copyright

Free use of the work without authorization and without payment of remuneration to the author is accepted for personal use except 1) replication of architecture works in the form of a building; 1) replication of data-bases or their essential parts; 3) software; 4) reproduction of full texts of books and music notations; 5) video playing with a considerable number viewers out of the family circle; 6) audiovisual work played using professional equipment⁸⁷⁵.

Free use of the work without authorization and without payment of remuneration to the author is accepted for information, research, educational and cultural purposes⁸⁷⁶, including point-system and including burlesque and caricature⁸⁷⁷ and also for law enforcement⁸⁷⁸. Free use of music is accepted for ritual purposes⁸⁷⁹.

The Russian Copyright Act does include the Berne three-step-test, but the limitation criteria are not explicitly formulated

Quotation

Quotation from any legally disclosed work in the original or in translation is permitted for scientific/academic research, polemical, critical, and informative purposes. The quotation must be limited to an extent justifiable by the purpose of the quotation. The name of the author and the source of the work have to be indicated.⁸⁸⁰

867 Art. 1281 (3)

868 Art. 1318

869 Art. 1327

870 Art. 1331

871 Art. 1340

872 Art. 1281 (4)

873 which means the years 1941 - 1945

874 Art. 1281 (5)

875 Art. 1273

876 Art. 1274

877 Art 1274 (3)

878 Art 1278

879 Art 1277

880 Art. 1274 (1)

Education

The use of lawfully disclosed works and excerpts thereof as illustrations in publications, in radio and television broadcasts, and in sound and video recordings for teaching is permitted without authorisation from the author and without payment of remuneration to the extent justified by the established purpose, and requires indication of the author's name.⁸⁸¹

Libraries, museums & archives

When a library provides copies of lawfully disclosed works for temporary free use this is accepted without authorisation from the author and without payment of remuneration. But if the copies are provided in digital form they may be used in the library premises only and without possibility to make extra digital copies of these works⁸⁸².

Non-profit reprographic reproduction of separate articles and small works lawfully published in collections, newspapers, and other periodical publications, and of short excerpts from lawfully published written works is permitted on condition that the reproduction is carried out either by libraries and archives at the request of natural persons for study and research purposes or by educational institutions for auditorium lectures. In any case, the reproduction is limited to a single copy. This reproduction can be made without authorisation from the author and without payment of remuneration and requires indication of the author's name.⁸⁸³

Broadcasting institution is allowed to make a copy for short term use of the work without authorization and without payment of remuneration to the author if the broadcasting institution has got the licence for broadcasting and if the institution uses its own equipment. This copy should be ruined after 6 months if the longer period is not licensed or legal. This copy may be kept in state or municipal archives if it is a document⁸⁸⁴.

National libraries may digitize and give access to digital copies of documents:

- old documents with defects;
- rare documents and manuscripts;
- machine readable documents when there are not devices needed for reading them;
- documents needed for research and education.

Digitization and access to the above documents should be done according to the Civil Code of the Russian Federation statements⁸⁸⁵.

National Libraries are the President Library named after Boris Yeltsin, the Russian State Library and the Russian National Library⁸⁸⁶.

Libraries and archives are allowed to make a single non-profit-making copy of a legitimately published work, either to repair or replace copies of a work which have been lost or damaged or to provide this copy to other libraries which for some reason have lost the works concerned from their collection.⁸⁸⁷ This free reproduction does not allow a library or archive to copy a work which it never possessed in order to complete its collection. The work copied must be (or have been) present in the collection, and these reproductions can be made without authorisation from the author and without payment of remuneration and requires indication of the author's name.

881 Art. 1274 (2)

882 Art 1274 (2)

883 Art. 1275 (2)

884 Art. 1279

885 Federal Law on Librarianship, art. 18 (1.1)

886 Federal Law on Librarianship, art. 18 (1)

887 Art. 1275 (1)

Closed network display

See Libraries, museums and archives section above.

Art in the public space

Free reproduction, broadcasting or public cable transmission of works of visual art, architecture, or photography which are permanently located in a place that is freely accessible. This is on the condition that the representation of the work does not constitute the basic subject of such reproduction, broadcast, or transmission, and that the representation of the work not be used for commercial purposes.⁸⁸⁸

Portrait

Communication to the public and further use of an image of a person (including photo, video, art work) is allowed with the person's consent only except 1) if used for the state and other public interests; 2) the image is made in a public place or public event; 3) the person was paid for the image. After the person's death the right over the image is transferred to the children, marriage partner or parents⁸⁸⁹.

III. Database

Database is presented in objective form assembly of independent materials (articles, calculations, legal acts, trial decisions and other alike material) systematised so that these materials may be searched and processed by computer⁸⁹⁰.

Intellectual rights for the content of a database are neighbouring rights⁸⁹¹.

Database creator

Compiler of a collection and author of other complex work (anthology, encyclopaedia, database, atlas or other alike works) inhere author's rights for selection and arrangement of materials (compilation)⁸⁹².

Translator, compiler or other author of derivate or complex work use his author's rights upon condition that the rights of the authors of works used for production of derivate or complex work are enforced⁸⁹³.

Author's rights of a translator, a compiler or other author of derivate or complex work are protected as rights for independent objects independently from protection of the rights of the authors of works used for production of derivate or complex work⁸⁹⁴.

If a computer programme and database was created according to a contract the subject of which was exactly creation of the programme or database then exclusive right belongs to the employer⁸⁹⁵.

888 Art. 1276

889 the Civil Code of the Russian Federation, part I, art 152.1

890 Art 1260 (2)

891 Art 1303

892 Art 1260 (2), 1333

893 Art 1260 (3), 1334

894 Art 1260 (4)

895 Art 1296

If a computer programme and database was created according to a contract the subject of which was wider than exactly creation of the programme or database then exclusive right belongs to the performer⁸⁹⁶.

Conditions for extraction and re-utilization

A person who is a legal owner of a computer programme or database (user) has the right without authorization and without payment of remuneration to the author: to make changes needed for functioning; to make a copy for the archiving or if the original is lost. These actions should not irreparably damage the computer programme or the database and should be without prejudice to any legal rights of the author or other right holder⁸⁹⁷.

Term of protection

Exclusive rights of the database manufacturer (compiler) are protected for 15 years after the manufacture or communication to the public. This term is renewed after each renewal of the database⁸⁹⁸.

Modification of work is a part of author's right. Modification of a computer programme or a database means any changes including translation, except adaptation⁸⁹⁹.

Databases as to the protection from illegal extraction and re-use of their content are objects of neighbouring rights⁹⁰⁰.

IV. Infringement of Authors' Rights

Responsibility for infringement of author's rights⁹⁰¹ or neighbouring rights⁹⁰² is compensation of losses or payment of an indemnity.

Protection against the Circumvention of Technological Measures

Technological measures are defined as any technical device or its components designed to control access to documents or limit actions, which are not permitted by author, holder of related rights or the holder of some other exclusive rights. It is prohibited to fulfil unauthorized actions for taking off the limitations in works' use that are established by technical means for protection. It is also not allowed to create, distribute, rent, supply for temporary use, free of charge, any device or its components, and to use them for commercial purpose or for providing services if such activities will lead to copyright infringement⁹⁰³.

Mediation procedure

No specifications on an obligatory mediation procedure before court procedure have been indicated.

The Protection of the Rights Management Data

896 Art 1297

897 Art 1280

898 Art 1335

899 Art 1270 (2, clause 9), 1334

900 Art 1304 (1)

901 Art 1301

902 Art 1311

903 Art 1299



Rights management data are defined as any information provided by rights holders, which identifies a work, the author or rights holders' names or the terms and conditions of use, which is notified on the copy of the work. It provides legal protection against unauthorized removal or alteration of electronic rights-management information from a copyright work.⁹⁰⁴

904 Art 1300

Country

Slovakia

Act

Copyright Act of Slovakia No. 618/2003 Coll. of 4 December 2003 as amended.

I. General Provisions

The Scope of the Act

The subject matter of copyright is constituted by literary and other artistic work and scientific work that is the result of creative intellectual activity of the author. Further specifications of what is a 'work' are indicated in the Act.⁹⁰⁵

An author is any natural person that created the work. An author of a collection as whole is any natural person that selected or arranged its content; the rights of authors of works selected or arranged in the collection shall not be affected thereby.⁹⁰⁶

Further specifications are given for a presumption of authorship⁹⁰⁷, work of co-authors⁹⁰⁸, joint works⁹⁰⁹ and collective work⁹¹⁰ and works published anonymously or under a pseudonym.⁹¹¹

Copyright shall include exclusive moral rights and exclusive economic rights.⁹¹²

Reproduction

Reproduction is defined as transfer of work or part thereof on other material carrier, either directly from the original of work or indirectly from another copy of work, temporarily or permanently, all this by any means and in any form; copy of work might be realised especially in the form of print, photographic, sound and audiovisual copy, by construction of work of architecture, or in form of other three-dimensional copy, or in electronic form including both analogue and digital expressions.⁹¹³

Communication of the Work to the Public

Communication to the public is a dissemination or performance of work by any technical means for dissemination of sound or sound and images simultaneously, or of the expression thereof, by means of wire or without wire, in such a way that said work is perceivable by persons in places where it would not be possible to perceive this work without such communication; communication to the public includes cable retransmission, broadcasting and the making available to the public.⁹¹⁴

905 Art. 7

906 Art. 6 (2)

907 Art. 54

908 Art. 8

909 Art. 9

910 Art. 10

911 Art. 12

912 Art. 16

913 Art. 5 (17)

914 Art. 5 (14)

The making available to the public is the communication to the public of a work in such a way that an individual may access it from a place and at a time individually chosen by him/her.⁹¹⁵

The Term of Protection

Author's rights shall in general last for the life of the author and 70 years after his death.⁹¹⁶

Related rights of performing artists⁹¹⁷, phonogram producers⁹¹⁸, producers of audiovisual fixations⁹¹⁹ and broadcasters⁹²⁰ are protected for 50 years.⁹²¹

Any person who publishes a previously undisclosed work after the expiry of duration of economic right shall accrue rights in such a work to the extent author of work would have if his/her rights still lasted. This right shall last for 25 years since the disclosure of the work.⁹²²

Works of co-authors⁹²³ and collective works⁹²⁴ are protected for 70 years after death of the last surviving author.

In the case of an audiovisual work the economic rights shall last throughout the lifetime of the main director, the scriptwriter, the author of the dialogues and composer of music that was specially created for this work and 70 years after the death of the last surviving person of the above.⁹²⁵

In the case of a work disclosed under a pseudonym or an anonymous work the economic rights shall last 70 years after the disclosure.⁹²⁶

II. Free Use of the Work / Limitations to the Copyright

No definition of the term 'free use' has been indicated in the Slovak Copyright Act.

The Slovak Copyright Act mentions the three-step-test: limitations of economic rights of author shall be permitted only in special cases provided in this Act; disposal with a work pursuant to these provisions must not conflict with normal exploitation of the work and must not unreasonably prejudice the legitimate interests of author.⁹²⁷

Quotation

A short part of a disclosed work may be used in the form of a quotation in another work without the authorisation of the author only for purposes of review or criticism of the disclosed work or for teaching purposes, scientific research purposes or artistic purposes. Such use must be in compliance with practice and its extent may not exceed that which is justified by the purpose of the quotation. The quotation shall be accompanied by a mention of the name of author or his/her pseudonym

915 Art. 5 (11)

916 Art. 21

917 Art. 63 (7), 65 (3)

918 Art. 64 (5), 65(4)

919 Art. 66 (5), 67(2)

920 Art. 68 (5)

921 Art. 70

922 Art. 52

923 Art. 21 (2)

924 Art. 21 (3)

925 Art. 21 (4)

926 Art. 21 (5)

927 Art. 38

unless it is an anonymous work, or the name of the person under the name of which the work is being made performed to the public, as well as the title of the work and source thereof. There shall be no obligation to pay remuneration to the author for such use.⁹²⁸ Regarding the interpretation of this regulation there is no there is no information on any relevant judicial decisions in Slovakia.

Education

The authorisation of an author shall not be required to make a reproduction of a short part of a disclosed work, for its distribution to the public by other form of transfer of ownership then sale or for the communication to the public of the short part of a disclosed work, provided such use does not exceed the scope justified by teaching purposes at school and is not being realised to gain any direct or indirect economic advantage.

Under the same conditions one may also make a reproduction on paper or similar medium by means of reprographic device, for its distribution to the public by any other form of transfer of ownership then sale, provided such does not exceed the scope justified by teaching purposes at school and is not being realised to gain any direct or indirect economic advantage. There shall be no obligation to pay remuneration to the author.⁹²⁹

Libraries, museums & archives

A library or an archive may make - without the authorisation of the author and without a duty to pay a remuneration to him - a copy

- a) of the work from its own collections, provided the purpose of the making of a copy is to satisfy the request of a natural person who will use that copy for the purpose of education or scientific research exclusively within the premises of library or archive;
- b) of any work from its own collections, provided the purpose of the reproduction is the replacement, archiving or preservation of the original of work or of a copy thereof for the cases of loss or destruction or damage, or where the permanent collection is concerned.⁹³⁰

Closed network display

No specifications are indicated for the display of material within the holdings of the library or archive, e.g. on dedicated terminals.

Art in the public space

Without the authorization of the author and without the duty to pay the remuneration to the author a work permanently located in a public place may be expressed by drawing, painting, graphics, relief picture or relief model or be fixed in a photography or in a film; work such expressed or fixed may be used without authorisation of the author of work permanently located in a public place by making a copy thereof, by its distribution to the public by sale or any other form of transfer of ownership or by communication to the public.⁹³¹

Portrait

No specifications for portrait rights have been indicated.

928 Art. 25

929 Art. 28

930 Art. 31

931 Art. 27

III. Databases

A database is defined as a collection of independent works, data or other material, arranged in systematic or methodical way and individually accessible by electronic or other means. Computer program used in the making or operation of database accessible by electronic means shall not be considered to constitute the database.⁹³²

Database creator

The creator of a database is the natural person or legal entity on initiative, account and responsibility of whose - or of which - the database was created.⁹³³

The creator of a database which shows qualitatively or quantitatively substantial investment in either the obtaining, verification or presentation of the contents thereof shall have *sui generis* right in database, irrespective of the protection of that database or the contents thereof by copyright or by other rights.⁹³⁴

The creator of a database shall have the right to authorise any extraction (the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form) and re-utilization (any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies thereof, by renting, by on-line transmission or other form of transmission) of all contents of a database or, evaluated qualitatively or quantitatively, of a substantial part thereof. The repeated and systematic extraction, re-utilization of insubstantial parts of the contents of a database and other act of use that is not normal or reasonable and that is prejudicial to legitimate interests of the creator of the database shall be prohibited.⁹³⁵

Conditions for extraction and re-utilization

The creator of a database which is made available to the public in whatever manner may not prohibit a user of database or a part thereof the extraction, re-utilization of qualitatively and quantitatively insubstantial part of the contents thereof, for any purposes whatsoever. The user of a database which is made available to the public in whatever manner may not use it otherwise than in normal and reasonable way and with no prejudice to the legitimate interests of the creator of a database. The user of a database which is made available to the public in whatever manner may not cause prejudice to the author or other person to which belong the rights pursuant to the Copyright Act in respect of works or other protected subject matter contained in the database.⁹³⁶

The lawful user of a database that is made available to the public in whatever manner may, without the authorisation of the creator thereof, extract, re-utilize a substantial part of its contents in the case of extraction for private purposes of the contents of a non-electronic database; extraction for the purposes of illustration within teaching or scientific research, as long as the source is indicated and as long as the extent of extraction is not focused to gain any direct or indirect economic advantage; extraction and re-utilization realised for public protection and within the administrative or judicial procedure.⁹³⁷

932 Art. 5 (4)

933 Art. 5 (23)

934 Art. 72

935 Art. 73

936 Art. 74

937 Art. 75

Term of protection

The *sui generis* right of the creator of a database shall last for 15 years. The duration of *sui generis* right of the creator of a database shall be calculated from the first day of the year following the year when the making of a database was completed. However, where the database is disclosed within this period, the duration of *sui generis* right of the creator of a database shall be calculated from the first day of the year following the year in which the database was disclosed. Any new qualitatively or quantitatively substantial contribution to the database consisting of the addition, deletion or other alteration shall result into the constitution of a new database.⁹³⁸

IV. Infringement of Authors' Rights

Protection Against the Circumvention of Technological Measures

Technological measures are defined as any procedure, product or component incorporated into procedure, product or equipment that shall prevent, restrict or exclude the illicit interference into copyright to work.⁹³⁹

Copyright is also infringed by anyone that in order to achieve economic gain by the provision of services or by other manner develops, produces, offers for sale, rental or lending, imports, distributes or uses equipment designed exclusively or partly for removal, disablement or inhibition of the operation of any device or technological measure for the protection of rights pursuant to this Act.⁹⁴⁰

Mediation Procedure

No specifications for a mediation board, e.g. in light of voluntary removal of technological measures for libraries and archives, have been indicated.

The allowed exemptions for libraries and archives as stated under free uses, shall not prejudice the provisions of this act on the protection of measures to prevent unauthorised making of a copy of work as well as any other unauthorised acts.⁹⁴¹

The Protection of the Rights Management Data

Rights-management information is defined as data which identify the work, the author of the work, the holder of any right in the work, information about the terms and conditions of use of the work and any digits or codes that represent such information, when any of these information items is attached to a copy of a work or appears in connection with the communication of a work to the public.⁹⁴²

Following shall be also deemed as illicit interference into copyright: removal or alteration of any electronic rights-management information.⁹⁴³

938 Art. 76

939 Art. 59 (2)

940 Art. 59 (1)

941 Art. 31 (3)

942 Art. 60 (2)

943 Art. 60 (1)

Country

Slovenia

Act

Copyright and Related Rights Act of 30 March 1995, as last amended on 24 June 2008.

I. General Provisions

The Scope of the Act

This Act regulates the right of authors with respect to their works of literature, science and art (copyright), the rights of performers, producers of phonograms, film producers, broadcasting organizations, publishers and creators of databases (related rights) and individual and collective management and enforcement of copyright and related rights.⁹⁴⁴

Copyright works are individual intellectual creations in the domain of literature, science, and art, which are expressed in any mode, unless otherwise provided by this Act. A list of types of works is further specified in the Act.⁹⁴⁵ Further specifications are given for presumption of authorship⁹⁴⁶, co-authorship⁹⁴⁷ and authors of compound works⁹⁴⁸.

An author is a natural person who created the work.⁹⁴⁹ Copyright belongs to the author by the mere fact of creation of a work.⁹⁵⁰ Copyright is an indivisible right to a work, from which emanate exclusive personal powers (moral rights), exclusive economic powers (economic rights), and other powers of the author (other rights of the author).⁹⁵¹

Reproduction

The reproduction right is the exclusive right to fix the work in a material medium or in another copy directly or indirectly, temporarily or permanently, by any means and in any form, in whole or in part. The work is reproduced in particular by graphic reproduction, three-dimensional reproduction, building or carrying out of an architectural structure, photographic reproduction, sound or visual fixation, and by saving in electronic form.⁹⁵²

Communication of the Work to the Public

The right of making available is the exclusive right that a work, by wire or wireless means, is made available to the public in such a way that members of the public may access it from a place and at a time individually chosen by them or that a work is transmitted to a member of the public based on an offer, intended for the public.⁹⁵³

944 Art. 1 (1)

945 Art. 5 (1)

946 Art. 11

947 Art. 12

948 Art. 13

949 Art. 10

950 Art. 14

951 Art. 15

952 Art. 23

953 Art. 32a

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁹⁵⁴

Further specifications are given for works with joint authorship⁹⁵⁵, collective works⁹⁵⁶, serial works⁹⁵⁷ and undisclosed works⁹⁵⁸.

Copyright in anonymous and pseudonymous works shall run for 70 years after the lawful disclosure of the work. When the pseudonym leaves no doubt as to the identity of the author, or if the author discloses his identity during the period referred to in the foregoing paragraph, the general provisions apply.⁹⁵⁹

In the case of a person who for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work the copyright protection of which has expired, he shall benefit from a protection equivalent to the economic rights covered by copyright, limited for a period of 25 years.⁹⁶⁰

Neighbouring rights for a performer⁹⁶¹, producer of phonograms⁹⁶², film producer⁹⁶³ and broadcasting organization⁹⁶⁴ are protected for 50 years.

The term of protection shall be calculated from the first day of January of the year following the year in which the event which gives rise to them has occurred.⁹⁶⁵

II. Free Use of the Work / Limitations to the Copyright

No definition of 'free use' has been indicated.

The Slovenian Copyright Act includes the three-step-test: limitations on copyright are permissible in cases mentioned in this Act, provided that the extent of such exploitation of copyright works is limited by the intended purpose, is compatible with fair practice, does not conflict with normal use of the work, and does not unreasonably prejudice the legitimate interests of the author.⁹⁶⁶

In present jurisdiction the cases of free use are interpreted in a limited sense, i.e. all the conditions from Article 50 should be fulfilled. Free use is interpreted as use without permission and without payment.

Quotation

It shall be permissible to make quotations of parts of a disclosed work and of single disclosed photographs, works of fine arts, architecture, applied art, industrial design and cartography,

954 Art. 59

955 Art. 60

956 Art. 62

957 Art. 64

958 Art. 63

959 Art. 61

960 Art. 140

961 Art. 127

962 Art. 132

963 Art. 136

964 Art. 138

965 Art. 67

966 Art. 46

provided it is necessary for the purpose of illustration, argumentation or referral. In this case the source and authorship of the work must be indicated, if the latter is indicated on the work used.⁹⁶⁷

Education

Without the assignment of a respective economic right, but on payment of equitable remuneration, it shall be lawful to reproduce in readers and textbooks intended for teaching, parts of works, as well as single works of photography, fine arts, architecture, applied art, industrial design and cartography, provided these are already disclosed works of a number of authors. Under the same conditions it is permitted to reproduce in periodical publications articles on current topics of general interest published in other periodicals, unless the author expressly prohibited it. These provisions apply accordingly to public communication of the works mentioned therein. In foregoing cases, the source and authorship of the work must be indicated, if the latter is indicated on the work used.⁹⁶⁸

Libraries, museums & archives

The reproduction of a disclosed work shall be free if made in no more than three copies. Publicly accessible archives and libraries, museums and educational or scientific establishments shall be free to reproduce, on any medium, works from their own copies for internal use, provided that this is not done for direct or indirect economic advantage. Reproduction according to the foregoing cases shall not be permitted with respect to written works to the extent of the whole book, graphic editions of musical works, electronic databases and computer programs, and in the form of building of architectural structures, unless otherwise provided by this Act or by contract.⁹⁶⁹

Closed network display

Of a disclosed work, not more than three copies are allowed for display simultaneously within a library, museum or archive.

Art in the public space

Works permanently placed in parks, streets, squares, or other generally accessible premises may be used freely. Works mentioned in the foregoing paragraph may not be reproduced in a three-dimensional form, used for the same purpose as the original work, or used for economic gain. In these cases the source and authorship of the work must be indicated, if the latter is indicated on the work used.⁹⁷⁰

Portrait

In Slovenia the portrait rights are a part of personal rights (constitutional rights) and not an issue of copyrights.

III. Databases

A database is defined as a collection of independent works, data or other materials in any form, arranged in a systematic or methodical way and individually accessible by electronic or other

967 Art. 51

968 Art. 47

969 Art. 50

970 Art. 55

means, whereby either the obtaining, verification or presentation of its contents demands a qualitatively or quantitatively substantial investment.⁹⁷¹

Database creator

The creator of a database shall have the exclusive right to reproduce his database, to distribute copies of his database, to rent copies of his database, to make available to the public his database and to perform other forms of communication to the public of his database.⁹⁷²

Conditions for extraction and re-utilization

A lawful user of a disclosed database or of a copy thereof may freely reproduce or alter that database, if this is necessary for the purposes of access to its contents and the normal use of those contents. Where the user is authorized only to a part of the database, this provision shall apply only to that part.⁹⁷³ He shall also be free to use qualitatively or quantitatively insubstantial parts of its contents for any purposes whatsoever.⁹⁷⁴

Lawful users of a published database shall be free to use a substantial part of its contents for the purposes of teaching and for private or other internal use of the contents of a non-electronic database. The use of the database shall be free if this is indispensable, in particular concrete cases, for the performance of tasks relating to public security or the performance of any official proceedings such as proceedings in the National Assembly or National Council of the Republic of Slovenia, or judicial, administrative or arbitrary proceedings.⁹⁷⁵

Term of protection

The rights of a Database creators shall last for 15 years after the completion of the making of the database. If the database is lawfully disclosed within this period, the rights shall last 15 years from such first disclosure. Any qualitatively or quantitatively substantial change to the contents of a database, which results in a qualitatively or quantitatively substantial new investment, shall qualify the database resulting from that investment for a new term of protection. A substantial change of contents includes also the accumulation of successive additions, deletions or alterations of the database.⁹⁷⁶

IV. Infringement of Authors' Rights

Protection Against the Circumvention of Technological Measures

Technological measures are defined as any technology, device, product, component or computer program or other measure that, in the normal course of its operation, is designed to prevent or restrict acts which are not authorised by the holder of rights under this Act. These measures shall be deemed effective where the use of a copyright work or subject matter of related rights is controlled by the right holders through application of an access control or protection process such as encryption, scrambling or other transformation of the work, or a copy control mechanism, which achieves the protection objective. It shall be deemed that a person infringes the exclusive rights

971 Art. 141a

972 Art. 141c

973 Art. 53a

974 Art. 141d

975 Art. 141g

976 Art. 141f

granted by this Act, when he circumvents effective technological measures designed to protect authors' works or subject matters of related rights. The acts referred to in this paragraph shall not be deemed infringements if they are carried out in certain special cases of performance of tasks relating to public security, or in order to ensure the correct execution of any official proceedings, such as proceedings in the National Assembly or National Council of the Republic of Slovenia, or judicial, administrative or arbitrary proceedings.⁹⁷⁷

Mediation Procedure

The right holder who uses technological measures pursuant to this Act, shall make available to the persons having legal access to the subject matter of rights, at their request and without delay, appropriate means on the basis of which they can enforce the limitations to copyright and related rights. If the right holder fails to secure the means referred to in the above paragraph, the persons concerned may request a mediation in the dispute. Limitations to the use of technological protection measures shall be provided, under conditions laid

down by this Act in case of use for the purpose of teaching and private and other internal reproduction (such as is the case for libraries and archive).⁹⁷⁸

The mediation may be requested without a mediation agreement. The Government of the Republic of Slovenia shall define with a decree, in greater detail, the mediation procedure, as well as the degree and kind of education of the mediator, and other conditions that he has to fulfil.⁹⁷⁹

The Protection of the Rights Management Data

Rights-management information is defined as any information provided by right holders on the identification of the subject matter of rights, the author, the right holder, the terms and conditions for use, and their relevant numbers and codes, when they are indicated on a copy of a copyright work or subject matter of related rights or when they appear in connection with their communication to the public. It shall be deemed that a person infringes the exclusive rights granted by this Act, when it commits any of the following acts by which it induces, enables, facilitates or conceals the infringements of the rights under this Act: the removal or alteration of any electronic rights-management information; or the reproduction, distribution, importation for distribution, rental or communication to the public of a copyright work or subject matter of related rights, where electronic rights management information has been removed or altered without authority.⁹⁸⁰

977 Art. 166a

978 Art. 166c

979 Art. 163 (2, 10)

980 Art. 166

Country

Sweden

Act

Act on Copyright in Literary and Artistic Works (Act 1960:729, of December 30, 1960, as amended up to April 1, 2009).

I. General Provisions

The Scope of the Act

Anyone who has created a literary or artistic work shall have copyright in that work. A list of types of works is indicated in the Act.⁹⁸¹

Copyright shall include the exclusive right to exploit the work by making copies of it and by making it available to the public, be it in the original or an altered manner, in translation or adaptation, in another literary or artistic form, or in another technical manner.⁹⁸²

A work may not be changed in a manner which is prejudicial to the author's literary or artistic reputation or to his individuality, nor may it be made available to the public in such a form or in such a context as is prejudicial in the manner stated.⁹⁸³

A person whose name or signature appears in the usual manner on copies of the works or when it is made available to the public, shall, in the absence of proof to the contrary, be deemed to be its author.⁹⁸⁴

Further specifications are given for a collection of works⁹⁸⁵, works with joint authorship⁹⁸⁶ and use of pseudonym or anonymous works⁹⁸⁷.

Reproduction

Reproduction ("the making of copies") is defined as any direct or indirect, temporary or permanent preparation of copies of the works, regardless of the form or through which method this is carried out and regardless of whether it concerns the work in whole or in part.⁹⁸⁸

When copies are made of a work, or when it is made available to the public, the name of the author shall be stated to the extent and in the manner required by proper usage.

Communication of the Work to the Public

The communication of a work to the public is defined as any making available of the work to the public by wire or by wireless means that occurs from a place other than that where the public may enjoy the work. It also includes acts of communication that occur in such a way that members of the public may access the works from a place and at a time individually chosen by them.⁹⁸⁹

981 Art. 1

982 Art. 2

983 Art. 3

984 Art. 7

985 Art. 5

986 Art. 6

987 Art. 7

988 Art. 2

989 Art. 2 (1)

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.⁹⁹⁰

Copyright in a cinematographic work subsists to the end of the 70th year after the death of the last deceased author (principal director, author of screenplay, author of dialogue, composer of the music).⁹⁹¹

Rights to an anonymous and pseudonymous work run for 70 years from the time the work was lawfully made public. However if, during the above period, the author discloses his identity or when the pseudonym adopted by the author leaves no doubt as to his identity, the general rules apply. If the work consists of two or more interconnected parts, the term of protection shall be calculated separately for each part.⁹⁹²

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author,⁹⁹³ lasting for 25 years.

Neighbouring rights for performing artists⁹⁹⁴, producers of recordings of sound and of images⁹⁹⁵ and sound, radio and television organisations⁹⁹⁶ are protected for 50 years after death.

II. Free Use of the Work / Limitations to the Copyright

No definition of 'free use' has been indicated .

When a work is used publicly on the basis of the provisions in these following paragraphs, the source shall be stated to the extent and in the manner required by proper usage, and the work may not be altered more than necessary for the use.⁹⁹⁷

The Swedish Copyright Act does not explicitly contain the Berne three-step-test, but the three-step-test is a natural interpretation underlying the exception in the law.

Cases of free use are basically interpreted in a limited sense in the present jurisdiction, as the law is interpreted in the interest of the author (pro autore).

Quotation

Anyone may, in accordance with proper usage and to the extent necessary for the purpose, quote from works which have been made available to the public.⁹⁹⁸

Education

Teachers and pupils may for educational purposes make recordings of their own performances of works. Such recordings may not be used for other purposes.⁹⁹⁹

990 Art. 43

991 Art. 43

992 Art. 44

993 Art. 44a

994 Art. 45

995 Art. 46

996 Art. 48

997 Art. 11

998 Art. 22

999 Art. 14

Anyone who, for use in educational activities, prepares a composite work consisting of works by a comparative large number of authors may reproduce minor portions or literary or musical works and such works of a limited scope, provided that five years have elapsed from the year in which the works were published. Works of fine art may be reproduced in connection with the text, provided that five years have elapsed from the year they were made public. The authors have a right to remuneration.¹⁰⁰⁰

Copies may be made for educational purposes of works which have been made public, where an extended collective license applies (An extended collective license applies to the exploitation of works in a specific manner, when an agreement has been concluded concerning such exploitation of works with an organisation representing a substantial number of Swedish authors in the field concerned. The extended collective license confers to the user the right to exploit works of the kind referred to in the agreement despite the fact that authors of those works are not represented by the organisation)¹⁰⁰¹. The copies may be used only in such educational activities that are covered by the agreement constituting the basis for the coming into being of the extended collective license. This provision does not apply if the author has filed a prohibition against the reproduction with any of the contracting parties.¹⁰⁰²

Works of fine art which have been made public may be reproduced in connection with the text in a scientific presentation which has not been prepared for commercial purposes; in connection with the text in a critical presentation, except if it is in digital form. These provisions apply only if the use of the reproduction is carried out in conformity with proper usage and to the extent called for by the information purpose.¹⁰⁰³

Libraries, museums & archives

Governmental and municipal archival authorities, the National Archive for Recorded Sound and Moving Images, scientific and research libraries that are operated by public authorities, and public libraries are entitled to make copies of works, with the exception of computer programs, for purposes of preservation, completion or research; in order to satisfy the desires of library borrowers for single articles or short extracts of works or for material which, for security reasons, must not be given away in original form; for use in reading devices. Copies that have been made on paper may be distributed to library borrowers. The Government may in specific cases grant also certain archives and libraries other than those mentioned above a right to make copies according to these provisions.¹⁰⁰⁴

Provisions on extended effect of collective licenses for the purpose of distribution to the public of copies in other cases and of communication to the public of works are specified in more detail in the Act.¹⁰⁰⁵

‘Reproduction for complementary purposes’ may take place when a copy of a work is incomplete; if a work has been published in parts, however, only in case the missing part can not be acquired on the market; if copies of a work can not be acquired on the market and the reproduction takes place

1000 Art. 18

1001 Art. 42a

1002 Art. 42c

1003 Art. 23

1004 Art. 16

1005 Art. 42d

at an archive or in a library which is entitled to receive statutory deposit copies of the actual type of productions.¹⁰⁰⁶

Closed network display

No explicit statements concerning the display of the work on the premises of the institution, e.g. only in dedicated terminals, have been indicated.

Art in the public space

Works of fine art may be reproduced in pictorial form if they are permanently located outdoors on, or at, a public place. Buildings may be freely reproduced in pictorial form.¹⁰⁰⁷

Portrait

The commissioner of a portrait has the right to decide on the publication of the portrait, i.e. not necessarily the portrayed person¹⁰⁰⁸ -

Anyone who has prepared a photographic picture has an exclusive right to make copies of the picture and to make it available to the public. The right applies regardless of whether the picture is used in its original form or an altered form and regardless of the technique used. As a photographic picture is considered also a picture that has been prepared by a process analogous to photography.¹⁰⁰⁹

III. Databases

No definition of a 'database' has been indicated.

Database creator

Anyone who has produced a catalogue, a table or another similar product in which a large number of information items have been compiled or which is the result of a significant investment, has an exclusive right to make copies of the product and to make it available to the public.¹⁰¹⁰

Conditions for extraction and re-utilization

Anybody is entitled to make, for private purposes, one or a few copies of works that have been made public with the author's/right holder's consent. As regards literary works in written form the making of copies may, however, concern only limited parts of works, or such works of limited scope. The copies must not be used for purposes other than private use. These provisions do not confer a right to make copies in digital form of compilations in digital form.¹⁰¹¹

Anyone who has the right to use a compilation is entitled to dispose of it in any way that is necessary in order for him to be able to use the compilation for its intended purpose.¹⁰¹²

Term of protection

1006 Section 2, Act 1993:1212

1007 Art. 24

1008 Art. 27(1) second sentence.

1009 Art. 49a

1010 Art. 49

1011 Art. 12

1012 Art. 26g

The rights specified in the paragraph ‘Database creator’ last for 15 years from the year in which the product was completed. If the product has been made available to the public within 15 years from the completion of the product, the right shall, however, last until 25 years have elapsed from the year in which the product first was made available to the public.¹⁰¹³

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Technological measures are defined as any effective technology, device or component designed to prevent or restrict, in the normal course of its operation, the reproduction or the making available to the public of a copyright-protected work without the consent of the author or his successor in title.¹⁰¹⁴

It is prohibited to circumvent, without the consent of the author or his successor in title, any digital or analogue lock which prevents or limits the making of copies of a work protected by copyright, to circumvent a technological process, such as encryption, that prevents or limits the making available to the public of a work protected by copyright, or to circumvent any other technological measure that prevents or limits such acts of making available. These provisions do not apply when someone, who in a lawful way has access to a copy of a work protected by copyright, circumvents a technological measure in order to be able to watch or listen to the work.¹⁰¹⁵

Mediation Procedure

Anyone who is entitled to exploit a work protected by copyright but benefiting from limitations (such as archives and libraries), shall be entitled to make use of a copy of a work that he lawfully has access to as referred to in the relevant provision, notwithstanding the fact that the copy is protected by a technological measure. Where a technological measure prevents such use, a Court may, at the request by a user entitled to that use, order, upon penalty of a fine, the author or his successor in title to make it possible for the user to exploit the work in the way prescribed in the provision referred to. These regulations do not apply to works that have been made available to the public in accordance with agreed contractual stipulations in a way that makes it possible for members of the public to get access to the works by means of a communication from a place and a time that they themselves have chosen.¹⁰¹⁶

The Protection of the Rights Management Data

Information on the management of rights is defined as any information, also in the form of numbers or codes, that is linked to a copy of a copyright-protected work or appears in connection with the communication to the public of such a work and which aims at identifying the work or the author or his successor in title or at informing about the conditions of use of the work. The information must have been provided by the author or his successor in title.¹⁰¹⁷

It is, without the consent by the author or his successor in title, prohibited to remove or alter any electronic rights management information relating to a work protected by copyright. It is also prohibited to exploit a work protected by copyright, or a copy of it, in case it has been altered in

1013 Art. 49

1014 Art. 52b

1015 Art. 52d

1016 Art. 52f

1017 Art. 52b



violation of the above statement, by distributing in, importing it for the purpose of distribution or communicating it to the public.¹⁰¹⁸

1018 Art. 52g

Country

The Netherlands

Act

Copyright Act of the Netherlands (1912) as amended (2006); Related Rights Act of the Netherlands (1993); Databases Act of the Netherlands (1999).

I. General Provisions

The Scope of the Act

Copyright is the exclusive right of the author of a literary, scientific or artistic work or his successors in title to communicate that work to the public and to reproduce it, subject to the limitations laid down by law.¹⁰¹⁹ A list of types of ‘works’ is specified in the Copyright Act.¹⁰²⁰

Unless there is proof to the contrary, the person who is named as author in or on the work or, where there is no such indication, the person who, when the work is communicated to the public, is named as the author by the party who communicates the work to the public, shall be deemed the author of the work.¹⁰²¹

Further indications are given for works with joint authorship¹⁰²² and work created under employment¹⁰²³.

Reproduction

Reproduction is defined as the direct or indirect, temporary or permanent, complete or partial reproduction of a recording or a reproduction thereof by any means whatever and in any form whatever; reproduction does not mean the temporary reproduction of a passing or incidental nature and forming an integral and essential part of a technical procedure whose sole purpose is the passing on by an intermediary through a network between third parties or enabling a lawful use and if it contains no independent economic value.¹⁰²⁴

The reproduction of a literary, scientific or artistic work includes the translation, arrangement of music, cinematographic adaptation or dramatization and generally any partial or total adaptation or imitation in a modified form, which cannot be regarded as a new, original work.¹⁰²⁵ The reproduction of a literary, scientific or artistic work includes the fixation of the whole or part of the work on an object, which is intended to play a work or to show it.¹⁰²⁶

Communication of the Work to the Public

1019 Art. 1 Copyright Act

1020 Art. 10 Copyright Act

1021 Art. 4 Copyright Act

1022 Art. 5 Copyright Act

1023 Art. 7 Copyright Act

1024 Art. 1 f Related Rights Act

1025 Art. 13 Copyright Act

1026 Art. 14 Copyright Act

The making available to the public is defined as making material protected under this Act available to the public by means of wired or wireless connection in such a manner that they will have access to it at such time and place as they might individually select.¹⁰²⁷

The communication to the public of a literary, scientific or artistic work includes the communication to the public of a reproduction of the whole or part of a work; the distribution of the whole or part of a work or of a reproduction thereof, as long as the work has not appeared in print; the rental or lending of the whole or part of a specimen of the work, with the exception of works of architecture and works of applied art, or of a reproduction thereof which has been brought into circulation by or with the consent of the holder of the rights; the recitation, performance or presentation in public of the whole or part of a work or a reproduction thereof and the broadcasting of a work incorporated in a radio or television programme by satellite or other transmitter or by a closed-circuit system.¹⁰²⁸

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.¹⁰²⁹

Related rights of performers, manufacturers of phonograms, broadcasting organisations and producers of the first print of a film are protected for 50 years.¹⁰³⁰

Copyright in an anonymous work shall expire 70 years after 1 January of the year following that in which the work was first lawfully communicated to the public. If the author discloses his identity prior to the end of this term, the duration of the copyright in the work concerned shall be calculated in accordance with the general provisions.¹⁰³¹

Any person who, after the expiry of the term of copyright protection, for the first time lawfully communicates to the public a previously unpublished work shall enjoy copyright protection. This right shall expire 25 years after 1 January of the year following that in which the work concerned was lawfully communicated to the public for the first time. These provisions also apply to previously unpublished works, which have never been protected by copyright, the author of which died more than 70 years ago.¹⁰³²

Further specifications are given for copyright in cinematographic works¹⁰³³ and works in volumes, parts, instalments, issues or episodes.¹⁰³⁴

II. Free Use of the Work / Limitations to the Copyright

No definition of 'free use' has been indicated

The Copyright Act of the Netherlands does not include the Berne three-step-test.

Cases of free use are interpreted in a rather limited sense in the present jurisdiction.

Quotation

1027 Art. 1 m Related Rights Act

1028 Art. 12 1 Copyright Act

1029 Art. 37 Copyright Act

1030 Art. 12 Related Rights Act

1031 Art. 38 Copyright Act

1032 Art. 45o Copyright Act

1033 Art. 40 Copyright Act

1034 Art. 41 Copyright Act

Quotations from a literary, scientific or artistic work in an announcement, criticism or scientific treatise or publication for a comparable purpose shall not be regarded as an infringement of copyright, provided that the work quoted from has been published lawfully; the quotation is commensurate with what might reasonably be accepted in accordance with social custom and the number and size of the quoted passages are justified by the purpose to be achieved and so far as reasonably possible the source, including the author's name, is clearly indicated. These regulations shall also apply to quotations in a language other than the original.¹⁰³⁵

Education

Reproduction or publication of parts of a literary, scientific or artistic work exclusively for use as illustrations for teaching purposes, so far as justified by the intended and non-commercial purpose will not be regarded as an infringement of copyright, provided that: the work from which the part is taken has been published lawfully; the adoption is in accordance with what might reasonably be accepted under the rules of social custom; so far as reasonably possible the source, including the author's name, has been clearly indicated; and a fair payment is made to the author or his right-holders. The provisions of this article shall also apply where the reproduction is in a language other than the original.¹⁰³⁶

Although it depends on the form, use in education is in general not 'free'. A very low remuneration has to be paid.

Libraries, museums & archives

Reproduction by libraries, museums or archives accessible to the public whose purpose does not include the attainment of a direct or indirect economic or commercial benefit will not be regarded as an infringement of copyright in a literary, scientific or artistic work, provided that the sole purpose of the reproduction is the restoration of the specimen of the work. The same conditions apply in case of retention of a reproduction of the work for the institution if the specimen is threatening to fall into disrepair and in order to keep the work in a condition in which it can be consulted if there is no technology available to render it accessible. Reproduction shall only be authorized if the specimen of the work forms part of the collection held by the library, museum or archive accessible to the public relying on this limitation.¹⁰³⁷

Closed network display

Unless otherwise agreed, the provision of access to a literary, scientific or artistic work forming part of the collections of libraries accessible to the public, and museums or archives which are not attempting to achieve a direct or indirect economic or commercial benefit, by means of a closed network through dedicated terminals in the buildings of those institutions for individual members of the public, for purposes of research or private study, will not constitute an infringement of copyright.¹⁰³⁸

Art in the public space

Reproduction or publication of pictures made in order to be put on permanent display in public places, of a work such as is normally found in such places, will not be regarded as an infringement

1035 Art. 15a Copyright Act

1036 Art. 16 Copyright Act

1037 Art. 16n Copyright Act

1038 Art. 15h Copyright Act

of the copyright. Where incorporation into a compilation work is involved, no more than a few works by the same author may be incorporated.¹⁰³⁹

Portrait

The reproduction of a portrait by or on behalf of the person portrayed or, after his death, by or on behalf of his relatives, shall not be deemed an infringement of copyright. Furthermore it shall not be deemed an infringement of copyright to communicate to the public a photographic portrait in a newspaper or periodical by or with the consent of one of the persons, provided the name of the author is indicated if it appears on the portrait. This article shall apply only to portraits, which the author was commissioned to make by or on behalf of the persons portrayed.¹⁰⁴⁰

Unless otherwise agreed, the owner of the copyright in a portrait shall not be entitled to communicate such a portrait to the public without the consent of the person portrayed or, during the ten years after his death, without the consent of his relatives. This article shall apply only to portraits, which the author was commissioned to make by or on behalf of the persons portrayed.¹⁰⁴¹

If a portrait is made without having been commissioned by or on behalf of the persons portrayed, the copyright owner shall not be allowed to communicate it to the public, in so far as the person portrayed or, after his death, his relatives have a reasonable interest in opposing its communication to the public.¹⁰⁴²

III. Databases

A database is defined as a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means and for which the acquisition, control or presentation of the contents, evaluated qualitatively or quantitatively, bears witness to a substantial investment.¹⁰⁴³

Database creator

The producer of a database is the person who bears the risk of the investment for creating the database.¹⁰⁴⁴

The producer of a database shall have the exclusive right to authorize the extraction (the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form) or re-utilization (any form of making available to the public of all or a part of the contents of a database by the distribution of copies, by renting, by online or other forms of transmission) of all or a substantial part of the content of the database, evaluated qualitatively or quantitatively, and the repeated and systematic extraction or re-utilization of insubstantial parts of the content of a database, evaluated qualitatively or quantitatively, where this does not conflict with the normal exploitation of that database or unreasonably prejudice legitimate interests of the producer of the database.¹⁰⁴⁵

1039 Art. 18 Copyright Act

1040 Art. 19 Copyright Act

1041 Art. 20 Copyright Act

1042 Art. 21 Copyright Act

1043 Art. 1 Database Act

1044 Art. 1 b Database Act

1045 Art. 2 1 Database Act

Conditions for extraction and re-utilization

The producer of a database which is made available to the public in whatever manner may not prevent the lawful user of the database from extracting or reutilizing insubstantial parts of its contents, evaluated qualitatively or quantitatively. Where the lawful user is authorized to extract or re-utilize only part of the database, the above paragraph shall apply only to that part. The lawful user of a database which is made available to the public in whatever manner may not without the authorization of the producer of the database extract or re-utilize a substantial part of the contents of the database in the case of extraction for private purposes of the contents of a non-electronic database; in the case of extraction for the purposes of illustration for teaching or scientific research, as long as the source is indicated and to the extent justified by the non-commercial purpose to be achieved; in the case of extraction or re-utilization for the purposes of public security or an administrative or judicial procedure.¹⁰⁴⁶

Term of protection

The right referred to in the paragraph ‘Database creator’ shall run from the date of completion of the making of the database. It shall expire 15 years from 1 January of the year following the date of completion. Any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, in particular resulting from successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall qualify the database resulting from that investment for a new term of protection.¹⁰⁴⁷

IV. Infringement of Authors’ Rights

Protection Against the Circumvention of Technological Measures

Technical provisions are defined as technology, equipment or components whose normal use would include the prevention or limitation of actions in relation to works protected under this Act and that have not been permitted by the author or his right-holders; technical provisions will be deemed to be ‘purposive’ if the use of a work protected by this Act by the performing artist, phonogram producer, producer of the first print of films or broadcasting organization, or their right-holders is managed by means of control of access or by application of a protection procedure such as encryption, encoding or some other transformation of the material protected under this Act or a copy protection that achieves the intended protection.¹⁰⁴⁸

Whoever circumvents purposive technical provisions and knows or reasonably ought to know that he has done so will be acting unlawfully.¹⁰⁴⁹

Mediation Procedure

No specifications for a mediation procedure have been indicated.

The Protection of the Rights Management Data

Information on the management of rights is defined as all information provided by the performing artist phonogram producer, producer of the first print of films or broadcasting organization, or their right-holders, connected with a reproduction of material protected under this Act or becoming

1046 Art. 2 Database Act

1047 Art. 6 Database Act

1048 Art. 1 n Related Rights Act

1049 Art. 19 Related Rights Act



known during its publication or when it is brought into circulation, serving to identify that material, or information concerning the conditions for the use of material protected under this Act or the numbers or codes containing that information.¹⁰⁵⁰

Whoever intentionally removes or amends electronic information concerning the management of rights without being entitled to do so, or removes such information in an unauthorised manner from recordings of performances, phonograms, films or programmes, or reproductions thereof, or distributes, encourages the distribution of, broadcasts or otherwise publishes such information in an unauthorised manner and who knows or reasonably ought to know that by doing so will be acting unlawfully.¹⁰⁵¹

1050 Art. 10 Related Rights Act

1051 Art. 19a Related Rights Act

Country

United Kingdom

Act

Copyright, Designs, and Patent Act of the United Kingdom, Cap. 48 (1988), as amended up to May 3, 2007. 1911 Copyright Act and 1956 Copyright Act.

I. General Provisions

The Scope of the Act

Copyright is a property right which exists in original literary, dramatic, musical or artistic works, sound recordings, films or broadcasts, and the typographical arrangement of published editions.¹⁰⁵²

The Act further specifies the definition of literary, dramatic and musical works¹⁰⁵³, artistic works¹⁰⁵⁴, sound recordings¹⁰⁵⁵, films¹⁰⁵⁶ and broadcasts¹⁰⁵⁷.

The author, in relation to a work, means the person who creates it.¹⁰⁵⁸ Further specifications are given for works of joint authorship¹⁰⁵⁹, first ownership of copyright¹⁰⁶⁰, the application of provisions to joint works¹⁰⁶¹ and to parts of works¹⁰⁶².

Reproduction

Copying in relation to a literary, dramatic, musical or artistic work means reproducing a substantial part of the work in any material form. This includes storing the work in any medium by electronic means. In relation to an artistic work copying includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two dimensions of a three-dimensional work. Copying in relation to a film or broadcast includes making a photograph of the whole or any substantial part of any image forming part of the film or broadcast. Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement. Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.¹⁰⁶³

Copyright in a literary work, other than a computer program or a database, or in a dramatic, musical or artistic work, the typographical arrangement of a published edition, a sound recording or a film, is not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable a

1052 Art. 1 (1)

1053 Art. 3

1054 Art. 4

1055 Art. 5A

1056 Art. 5B

1057 Art. 6

1058 Art. 9 (1)

1059 Art. 10

1060 Art. 11

1061 Art. 88

1062 Art. 89

1063 Art. 17 (2-6)

transmission of the work in a network between third parties by an intermediary; or a lawful use of the work and which has no independent economic significance.¹⁰⁶⁴

Communication of the Work to the Public

The communication of the work to the public is defined as communication by electronic transmission, and in relation to a work includes the broadcasting of the work and the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.¹⁰⁶⁵

The communication to the public of the work is an act restricted by the copyright in a literary, dramatic, musical or artistic work, a sound recording or film, or a broadcast.¹⁰⁶⁶

The Term of Protection

Author's rights shall in general run for the life of the author and 70 years after his death.¹⁰⁶⁷

In case of a work of unknown authorship, copyright expires after 70 years from the end of the calendar year in which the work was made, or if during that period the work is made available to the public, after 70 years from the end of the calendar year in which it is first so made available. If the identity of the author becomes known before the end of this period, the general provisions apply.¹⁰⁶⁸ Further specifications are given for works of joint authorship.¹⁰⁶⁹

If the work is computer-generated the above provisions do not apply and copyright expires after 50 years from the end of the calendar year in which the work was made.¹⁰⁷⁰

Copyright in sound recordings expires after 50 years from the end of the calendar year in which the recording is made, or if during that period the recording is published, 50 years from the end of the calendar year in which it is first published, or if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, 50 years from the end of the calendar year in which it is first so made available.¹⁰⁷¹

Copyright in films expires after 70 years from the end of the calendar year in which the death occurs of the last to die of the following persons: the principal director, the author of the screenplay, the author of the dialogue, or the composer of music specially created for and used in the film.¹⁰⁷²

If the identity of these persons is unknown, copyright expires after 70 years from the end of the calendar year in which the film was made, or if during that period the film is made available to the public, after 70 years from the end of the calendar year in which it is first so made available. The general provisions apply if the identity of any of those persons becomes known before the end of this period. If in any case there is no person as stated above, these provisions do not apply and copyright expires after 50 years from the end of the calendar year in which the film was made.¹⁰⁷³

1064 Art. 28A24

1065 Art. 20 (2)

1066 Art. 20 (1)

1067 Art. 12 (2)

1068 Art. 12 (3,4)

1069 Art. 12 (8)

1070 Art. 12 (7)

1071 Art. 13A (2)

1072 Art. 13B (2)

1073 Art. 13B (4,5,9)

Copyright in a broadcast expires after 50 years from the end of the calendar year in which the broadcast was made, subject as follows.¹⁰⁷⁴

Copyright in the typographical arrangement of a published edition expires after 25 years from the end of the calendar year in which the edition was first published.¹⁰⁷⁵

Neighbouring rights for a performance expire after 50 years from the end of the calendar year in which the performance takes place, or if during that period a recording of the performance is released, 50 years from the end of the calendar year in which it is released.¹⁰⁷⁶

In unpublished literary works, copyright can last until end 2039. This is a throw back to the 1911 Copyright Act.

II. Free Use of the Work / Limitations to the Copyright

No definition of ‘free use’ has been indicated. but Copyright protects a substantial part of work, therefore it is widely accepted that an “insubstantial” part can be copied (although this is both qualitatively and quantitatively based). In addition, there are a number of limitations and exceptions which provide defences for certain uses of certain works for certain purposes.

The United Kingdom Copyright Act contains the three-step-test in as much as the UK is a signatory of the Berne Convention.

Quotation

No special indications for allowed quotation have been indicated in the Act, but Copyright protects a substantial part of work, therefore it is widely accepted that an “insubstantial” part can be copied. This would facilitate use of quotes as well.

However, the Act mentions ‘fair dealing’: fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement and provided that the work has been made available to the public.¹⁰⁷⁷

Education

The expression "educational establishment" means any school, and any other description of educational establishment specified by order of the Secretary of State,¹⁰⁷⁸ but excludes museums, libraries and archives.

Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying is done by a person giving or receiving instruction, is not done by means of a reprographic process, and is if possible accompanied by a sufficient acknowledgement, and provided that the instruction is for a non-commercial purpose.¹⁰⁷⁹ Under the same conditions copyright in a sound recording, film or

1074 Art. 14 (2)

1075 Art. 15

1076 Art. 191 (2)

1077 Art. 30 (1)

1078 Art. 174 (1)

1079 Art. 32 (1)

broadcast is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks.¹⁰⁸⁰

The inclusion of a short passage from a published literary or dramatic work in a collection which is intended for use in educational establishments and is so described in its title, and in any advertisements issued by or on behalf of the publisher, and consists mainly of material in which no copyright subsists, does not infringe the copyright in the work if the work itself is not intended for use in such establishments and the inclusion is accompanied by a sufficient acknowledgement. This does not authorise the inclusion of more than two excerpts from copyright works by the same author in collections published by the same publisher over any period of five years.¹⁰⁸¹

A recording of a broadcast, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast, or in any work included in it, provided that it is accompanied by a sufficient acknowledgement of the broadcast and that the educational purposes are non-commercial. Copyright is not infringed where a recording of a broadcast or a copy of such a recording, whose making was by virtue of subsection (1) not an infringement of copyright, is communicated to the public by a person situated within the premises of an educational establishment provided that the communication cannot be received by any person situated outside the premises of that establishment.¹⁰⁸²

In the UK, schemes are administered by the Educational Recording Agency (ERA, as outlined in the ERA and ERA Plus Licences) and also the Open University (OU – OU licence) which would cover most broadcast content of relevance within an educational context.

Reprographic copies of passages from published literary, dramatic or musical works may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work, provided that they are if possible accompanied by a sufficient acknowledgement and the instruction is for a non-commercial purpose. Reprographic copies of passages from published editions may, to the extent permitted by this section, be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the typographical arrangement of the edition.¹⁰⁸³

The reality for most organisations is that to carry out any copying activities (photocopying and scanning), they will need permission. Substantial photocopying and scanning activities are normally covered by a CLA Licence (Copyright Licensing Agency).

Libraries, museums & archives

In this paragraph references in any provision to a prescribed library or archive are to a library or archive of a description prescribed for the purposes of that provision by regulations made by the Secretary of State. References to the librarian or archivist include a person acting on his behalf.¹⁰⁸⁴

A “public library” is defined in specific official Acts.¹⁰⁸⁵

The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply a copy of an article in a periodical without infringing any copyright in the text, in any

1080 Art. 32 (2)

1081 Art. 33 (1,2)

1082 Art. 35 (1)

1083 Art. 36 (1)

1084 Art. 37 (1,6)

1085 Art. 178

illustrations accompanying the text or in the typographical arrangement. The prescribed conditions shall include the following: that copies are supplied only to persons satisfying the librarian that they require them for the purposes of; research for a non-commercial purpose or private study, and will not use them for any other purpose; that no person is furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical; and that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.¹⁰⁸⁶

Under the same conditions, the librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply from a published edition a copy of part of a literary, dramatic or musical work (other than an article in a periodical) without infringing any copyright in the work, in any illustrations accompanying the work or in the typographical arrangement.¹⁰⁸⁷

The librarian of a prescribed library may, if the prescribed conditions are complied with, make and supply to another prescribed library a copy of an article in a periodical, or the whole or part of a published edition of a literary, dramatic or musical work, without infringing any copyright in the text of the article or, as the case may be, in the work, in any illustrations accompanying it or in the typographical arrangement.¹⁰⁸⁸

The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or any illustrations accompanying it. This section does not apply if the work had been published before the document was deposited in the library or archive, or the copyright owner has prohibited copying of the work, and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact. The prescribed conditions shall include the following that copies are supplied only to persons satisfying the librarian or archivist that they require them for the purposes of research for a non-commercial purpose, or private study, and will not use them for any other purpose; that no person is furnished with more than one copy of the same material; and (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.¹⁰⁸⁹

The Copyright Act also contains special provisions for the preservation of certain types of works.

The librarian or archivist of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive in order to preserve or replace that item by placing the copy in its permanent collection in addition to or in place of it, or in order to replace in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged, without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement. The prescribed conditions shall include provision for restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question to fulfil that purpose.¹⁰⁹⁰

1086 Art. 38

1087 Art. 39

1088 Art. 41

1089 Art. 43

1090 Art. 42

A recording of a broadcast of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or in any work included in it.¹⁰⁹¹

Closed network display

No explicit statements concerning the display of the work on the premises of the institution, e.g. only in dedicated terminals, have been indicated. The UK did not choose to implement the non mandatory sections of the InfoSoc Directive 29/2001 which would have included this provision

Art in the public space

This section applies to buildings, and sculptures, models for buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public. The copyright in such a work is not infringed by making a graphic work representing it, making a photograph or film of it, or making a broadcast of a visual image of it. Nor is the copyright infringed by the issue to the public of copies, or the communication to the public,¹⁰⁹² of anything whose making was, by virtue of this section, not an infringement of the copyright.

Portrait

A person who for private and domestic purposes commissions the taking of a photograph or the making of a film has, where copyright subsists in the resulting work, the right not to have copies of the work issued to the public, the work exhibited or shown in public, or the work communicated to the public; and a person who does or authorises the doing of any of those acts infringes that right.¹⁰⁹³

III. Databases

A database is defined as a collection of independent works, data or other materials which are arranged in a systematic or methodical way, and are individually accessible by electronic or other means. A literary work consisting of a database is original if, and only if, by reason of the selection or arrangement of the contents of the database the database constitutes the author's own intellectual creation.¹⁰⁹⁴

Database creator

No specifications on the rights of the creator of a database have been indicated.

Conditions for extraction and re-utilization

It is not an infringement of copyright in a database for a person who has a right to use the database or any part of the database, (whether under a licence to do any of the acts restricted by the copyright in the database or otherwise) to do, in the exercise of that right, anything which is necessary for the purposes of access to and use of the contents of the database or of that part of the database.¹⁰⁹⁵

1091 Art. 75 (1)

1092 Art. 62

1093 Art. 85 (1)

1094 Art. 3A (1,2)

1095 Art. 50D (1)

Term of protection

Under section 12 of the CDPA, duration will be lifetime of the author plus 70 years.

IV. Infringement of Authors' Rights

Protection Against the Circumvention of Technological Measures

Technological measures are defined as any technology, device or component which is designed, in the normal course of its operation, to protect a copyright work other than a computer program. Such measures are "effective" if the use of the work is controlled by the copyright owner through an access control or protection process such as encryption, scrambling or other transformation of the work, or a copy control mechanism, which achieves the intended protection.¹⁰⁹⁶

This section applies where effective technological measures have been applied to a copyright work other than a computer program; and a person (B) does anything which circumvents those measures knowing, or with reasonable grounds to know, that he is pursuing that objective. The following persons have the same rights against B as a copyright owner has in respect of an infringement of copyright: a person issuing to the public copies of, or communicating to the public, the work to which effective technological measures have been applied; and the copyright owner or his exclusive licensee, if he is not the person specified previously¹⁰⁹⁷.

Mediation Procedure

In this section "voluntary measure or agreement" means any measure taken voluntarily by a copyright owner, his/her exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program, or any agreement between a copyright owner, his/her exclusive licensee or a person issuing copies of, or communicating to the public, a work other than a computer program and another party, the effect of which is to enable a person to carry out a permitted act.

Where the application of any effective technological measure to a copyright work other than a computer program prevents a person from carrying out a permitted act in relation to that work then that person or a person being a representative of a class of persons prevented from carrying out a permitted act may issue a notice of complaint to the Secretary of State.

Following receipt of a notice of complaint, the Secretary of State may give to the owner of that copyright work or an exclusive licensee such directions as appear to the Secretary of State to be requisite or expedient for the purpose of establishing whether any voluntary measure or agreement relevant to the copyright work the subject of the complaint subsists; or (where it is established there is no subsisting voluntary measure or agreement) ensuring that the owner or exclusive licensee of that copyright work makes available to the complainant the means of carrying out the permitted act the subject of the complaint to the extent necessary to so benefit from that permitted act.¹⁰⁹⁸

The Protection of the Rights Management Data

Rights management information is defined as any information provided by the copyright owner or the holder of any right under copyright which identifies the work, the author, the copyright owner or the holder of any intellectual property rights, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information.¹⁰⁹⁹

1096 Art. 296ZF

1097 Art. 296ZA (1-3)

1098 Art. 296ZE (1-4)

1099 Art. 296ZG (7) (b)



This section applies where a person (D), knowingly and without authority, removes or alters electronic rights management information which is associated with a copy of a copyright work, or appears in connection with the communication to the public of a copyright work, and where D knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright. This section also applies where a person (E), knowingly and without authority, distributes, imports for distribution or communicates to the public copies of a copyright work from which electronic rights management information associated with the copies, or appearing in connection with the communication to the public of the work, has been removed or altered without authority and where E knows, or has reason to believe, that by so doing he is inducing, enabling, facilitating or concealing an infringement of copyright.¹¹⁰⁰

¹¹⁰⁰ Art. 296ZG (1,2)

Annex II

Azerbaijan

First name	Aysel
Surname	Gasimova
Organization	Copyright Agency
Title/Function	Department of International relations and Informational Supply, leading counselor
e-mail address	az_rmha@azerin.com
Phone number	+ 994 12 498 10 29 / + 994 12 493 39 44

Belgium

First name	Herman
Surname	Croux
Organization	Marx Van Ranst Vermeersch & Partners
Title/Function	Lawyer
e-mail address	Herman.Croux@mvvp.be
Phone number	+ 32 2 285 01 00

Bulgaria

First name	Olga
Surname	Sirakova
Organization	Interius
Title / Function	LLD/Senior Partner
e-mail address	oandon@yahoo.com / interius@nat.bg
Phone number	+ 359 2 9655 105 / + 359 2 9655 113

Cyprus

First name	Marinos	Achilleas
Surname	Ioannides	Demetriades
Organization	Cyprus Institute	Lellos P Demetriades Law Office LLC
Title / Function		Partner
e-mail address	m.ioannides@cyi.ac.cy	achilleas@ldlaw.com.cy
Phone number	+ 32 497 55 33 33	+ 357 22 67 60 60

Czech Republic

First name	Katerina	
Surname	Salonova	
Organization	Narodni muzeum, Czech republic	
Title / Function	Research worker and developer	
e-mail address	katerina_salonova@nm.cz	
Phone number	+ 420 224 497 364	

Estonia

First name	Toomas	
Surname	Seppel	
Organization	Ministry of Culture, Media and Copyright Department	
Title / Function	Advisor	
e-mail address	toomas.seppel@kul.ee	
Phone number	+ 372 6282 270	

Finland

First name	Tuula	
Surname	Hämäläinen	
Organization	Finnish National Gallery	
Title / Function	Legal advisor	
e-mail address	Tuula.Hamalainen@fng.fi	
Phone number	+ 358 9 173 36349	

France

First name	Anne
Surname	Le Morvan
Organization	Bureau pour la propriété littéraire et artistique
Title / Function	
e-mail address	anne.le-morvan@culture.gouv.fr
Phone number	+ 33 (0)1 40 15 38 54

Germany

First name	Börries
Surname	von Notz
Organization	Jüdisches Museum Berlin
Title / Function	Managing Director
e-mail address	b.vonnotz@jmberlin.de
Phone number	+ 49 30 25993399

Greece

First name	Christos
Surname	Golfinopoulos
Organization	Golfinopoulos Law Office
Title / Function	Attorney-at-Law
e-mail address	Christos@golfinopoulos.com
Phone number	+ 30 2610 272628

Hungary

First name	Annamaria
Surname	Halász
Organization	Ministry of Education and Culture
Title / Function	counsellor
e-mail address	annamaria.halasz@okm.gov.hu
Phone number	+ 36 1 473 7782

Italy

First name	Giuseppe
Surname	Mazziotti
Organization	University of Copenhagen, Faculty of Law
Title / Function	Assistant professor of intellectual property law
e-mail address	giuseppe.mazziotti@jur.ku.dk
Phone number	+ 45 28240996

Latvia

First name	Una
Surname	Balode
Organization	Valsts aģentūra “Kultūras informācijas sistēmas” - State agency “Culture Information Systems”
Title / Function	Project manager
e-mail address	Una.Balode@kis.gov.lv
Phone number	+ 371 67844897 + 371 28625686

Luxembourg

First name	Guy
Surname	Frank
Organization	Ministry of Culture, Higher Education and Research
Title / Function	Head of cultural statistics and accounting department
e-mail address	guy.frank@mc.etat.lu
Phone number	+ 352 247 86623

Malta

First name	Patrick
Surname	Valentino
Organization	
Title / Function	Lawyer
e-mail address	pvalen@mail.global.net.mt
Phone number	

Poland

First name	Beata
Surname	Sobczak
Organization	Sobczak-Połączyński-Łagoda Kancelaria Radców Prawnych s.c.
Title / Function	Partner, barrister
e-mail address	Kancelaria@ic.torun.pl
Phone number	+ 48 056 663 50 60

Romania

First name	Bogdan
Surname	Manolea
Organization	PFA Bogdan Manolea (self-employed)
Title / Function	
e-mail address	bogdan@legi-internet.ro
Phone number	+ 40 721 205 603

Russia

First name	Nadezhda
Surname	Brakker
Organization	Centre PIC
Title / Function	Leading Specialist
e-mail address	Nbrakker@gmail.com
Phone number	+7 926 520 0280 (mobile)

Slovakia

First name	Zuzana
Surname	Adamová
Organization	Ministry of Culture of the Slovak Republic
Title / Function	Expert
e-mail address	zuzana.adamova@culture.gov.sk
Phone number	+ 421 22 048 2234

Slovenia

First name	Franc J.
Surname	Zakrajsek
Organization	Ministry of Culture of the Republic of Slovenia
Title / Function	consultant
e-mail address	franc.zakrajsek@guest.arnes.si
Phone number	+ 386 41 674 447

Sweden

First name	Marianne
Surname	Levin
Organization	Stockholm University
Title / Function	Professor
e-mail address	marianne.levin@juridicum.su.se
Phone number	+ 46 (0)8 16 25 44

The Netherlands

First name	Kees
Surname	Schoemaker
Organization	Rijksmuseum Amsterdam
Title / Function	Collections Secretary and Legal Adviser
e-mail address	k.schoemaker@rijksmuseum.nl
Phone number	+ 3120 6747245

United Kingdom

First name	Naomi
Surname	Korn
Organization	Collections Trust
Title / Function	Intellectual Property Officer
e-mail address	naomi@collectionstrust.org.uk
Phone number	+ 44 79 57 761032