

Copyright Guidance Notes



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The information in these notes is provided for guidance only; it does not constitute, and is not intended to replace, appropriate legal advice. In cases where library staff are unsure whether an activity in relation to a licensed resource is permissible, we recommend they approach the publisher to seek clarification. In cases where library staff are unsure whether an activity is legal, it may be appropriate to seek qualified legal advice.

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Basic information

What is copyright?

Copyright is a member of the family of Intellectual Property (IP) Rights. Other IP rights include designs, patents, trademarks, and a fairly recent introduction into European and US law called database rights. Copyright exists to protect the works of authors and performers for a specified period of time during which time they are able to exploit their works in any way they wish. Once a work has been created, is suitably original i.e. not a facsimile copy of someone else's work, and is expressed in a recognisable form (written down, painted, composed, generated on the web etc), authors (creators) are automatically given a bundle of rights to manage: the right to copy, the right to publish, the right to perform in public, the right to adapt, the right to include in a broadcast or cable programme. These rights may be bought and sold like property.

Copyright is a set of [exclusive rights](#) granted by the law of a jurisdiction to the author or creator of an original work, including the right to copy, distribute and adapt the work. [Exceptions and limitations](#) to these rights strive to balance the public interest in the wide distribution of the material produced and to encourage [creativity](#).

Exceptions include [fair dealing](#) and [fair use](#), and such use does not require the permission of the copyright owner. All other uses require permission and copyright owners can license or permanently transfer or assign their exclusive rights to others.

Copyright laws are partially standardized through international and regional agreements such as the [Berne Convention](#) and the European copyright directives. Although there are consistencies among nations' copyright laws, each jurisdiction has separate and distinct laws and regulations covering copyright. National copyright

laws on licensing, transfer and assignment of copyright still vary greatly between countries and copyrighted works are licensed on a territorial basis. Some jurisdictions also recognize [moral rights](#) of creators, such as the right to be credited for the work.

Initially copyright only applied to published books, but over time copyright was extended to other uses, such as translations and [derivative works](#). Copyright now covers a wide range of works, including [maps](#), [dramatic works](#), [paintings](#), [photographs](#), [sound recordings](#), [motion pictures](#), and [computer programs](#)¹.

International basis

The [Berne Convention](#) requires its member states to provide protection for every production in the literary, scientific and artistic domain. The Berne Convention has a number of core features, including the principle of national treatment, which holds that each member state to the Convention would give citizens of other member states the same rights of copyright that it gave to its own citizens (Article 3-5).[\[20\]](#)

Another core feature is the establishment of minimum standards of national copyright legislation in that each member state agrees to certain basic rules which their national laws must contain, though member states can if they wish increase the amount of protection given to copyright owners. One important minimum rule was that the [term of copyright](#) was to be a minimum of the author's lifetime plus 50 years. Another important minimum rule established by the Berne Convention is that copyright arises with the creation of a work and does not depend upon any formality such as a system of public registration (Article 5(2)).

The Berne Convention also enshrined [limitations and exceptions to copyright](#), enabling the reproduction of literary and artistic works without the copyright owners prior permission. The detail of these exceptions was left to national copyright legislation, but the guiding principle is stated in Article 9 of the convention. The so called [three-step test](#) holds that an exception is only permitted "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".

¹ This definition was taken from Wikipedia (14/12/2010): <http://en.wikipedia.org/wiki/Copyright> and is made available here under the Creative Commons Attribution-ShareAlike 3.0 Unported License

Free use of copyrighted work is expressly permitted in the case of quotations from lawfully published works, illustration for teaching purposes, and news reporting².

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the [World Trade Organization](#) (WTO) that sets down minimum standards for many forms of [intellectual property](#) (IP) regulation as applied to nationals of other WTO Members. It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994.

Specifically, TRIPS contains requirements that nations' laws must meet for copyright rights, including the rights of performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout-designs; patents; monopolies for the developers of new plant varieties; trademarks; trade dress; and undisclosed or confidential information. TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

The TRIPS agreement introduced intellectual property law into the international trading system for the first time and remains the most comprehensive international agreement on intellectual property to date.

How do I obtain copyright?

There is normally no need to register copyright in order to obtain it. Works created, as long as they are original and fixed, are protected automatically. The use of the copyright symbol - © - is normally not necessary in order to obtain copyright.

² This information has been copied from Wikipedia (14/12/2010): <http://en.wikipedia.org/wiki/Copyright> and is made available here under the Creative Commons Attribution-ShareAlike 3.0 Unported License

However, it is good practice to use the copyright symbol to indicate the copyright owner of a particular work and the year that work was created.

What does copyright protect?

Copyright protects original literary, dramatic, musical and artistic works, sound recordings, films (and videos), broadcasts (including cable and satellite broadcasts). It makes no difference whether these works are in print or electronic form so email messages, works included in an electronic database and material on Web sites are protected too. Computer programs are protected as literary works. Depending on the law in question, databases (including printed ones) may be protected by copyright as literary works but they may also be protected in their own right and have separate protection. In Europe this is called Database Right (a legal right introduced into European law in 1996. concerned with the copying and dissemination of information in computer databases). [For more on this click [here](#)].

Copyright does not normally protect individual bibliographic citations, facts and headlines, although a collection of them, such as are commonly found in abstracting and indexing databases, would be protected by copyright and/or database right.

How long are works protected?

The term of protection for copyright in literary, dramatic, musical and artistic works and films is life of the author plus a term of either 50 or 70 years. The term depends on the law of the country in question. The Berne Convention minimum is life plus 50 years but many nations have extended this. So when an author has been dead for 50 (or 70) years, his/her work goes out of copyright. The term of protection for sound recordings and broadcasts is 50 years from the end of the year in which they were made, released or broadcast.

First owners of copyright

The first owner of copyright in a literary, dramatic, musical or artistic work is the author. However, if a work is created as part of the terms of employment, some laws assume that the employer will own copyright. For sound recordings, the owner is the person who puts the recording together; for films, it is the producer; a broadcaster owns the copyright in what is broadcast; and a cable programme service provider will

own the copyright in the service. The first owners are given exclusive economic rights to enable them to exploit their works in any way they wish.

Moral rights

Some authors also have the right to be identified as the author (paternity right) and the right to object to derogatory treatment of their works (integrity right). These are called moral rights which remain with the authors and so may not be bought and sold like copyrights [for more on this, click [here](#)].

National treatment

Those nations which have signed up to international copyright conventions, such as the Berne Convention, are obliged to treat works of foreign authors as though they were of national origin. This is called national treatment.

Piracy

If a person makes multiple unauthorised copies of a work and sells them without paying anything to the author/s (or to rights holder/s, if the rights have been assigned or sold) then the rights holder/s may take action against the person in the courts. Such activity is called deliberate infringement for economic gain, but is more commonly known as piracy. In most nations, piracy is a criminal offence.

Limitations and exceptions to copyright

Copyright balance

Copyright law is supposed to be flexible enough to allow access to and use of works in specific cases, which are in the public interest. After all, copyright is designed to encourage creativity so potential creators must be able to research the works of others, without fear of prosecution, in order to develop new ideas. Authors are not expected to buy every work in order to do research. Research and education are therefore deemed valid reasons for copying. Governments, when drafting copyright laws, have to be extremely careful however to ensure that any exceptions and limitations to the authors' rights do not prejudice the legitimate interests of authors to exploit their works. This is what is known as copyright balance.

It is important to understand that users of copyright works do not have rights under copyright law, but permissions to copy. It is not seen as an infringement if one copies under an exception. If an infringement case were brought by a rights holder, an exception is likely to be quoted as the defence in court.

Copying in the public interest

The Berne Convention, which establishes the basic principles of copyright protection, allows for copying to take place in certain specific cases, which do not conflict with normal exploitation and do not unreasonably prejudice the legitimate interests of authors. The presence or otherwise of conflict is tested by the Three Step Test which is included in Article 13 of TRIPs. It reads,

*Members shall confine limitations and 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 rights holder**. (the three steps are in bold for emphasis.)*

Governments recognise that in certain cases it is in the public interest to copy and have included exceptions and limitations to the exclusive rights of authors which conform to this test.

It has to be pointed out that all copying, other than by or with permission from the rights holder, is not without risk. One can never be absolutely sure, even when copying under an exception, whether such copying infringes copyright since any such activity could, in theory, be challenged by a rights holder. So, when allowing copying, risks can be managed to limit liability by asking oneself questions about whether the act of copying is likely to harm the rights holder - for example:

- am I copying a work (or part of a work) for a non-educational purpose?
- am I copying a work (or part of a work) in order to profit directly by it?
- am I copying a work so that I don't have to buy it?
- am I making a large number of copies of the same item?

If the answer to these questions is “No” then there should be no problem. If the answer to any of them is “Yes” then authorisation may have to be sought from the

rights holder/s. If the material is governed by a licence, consult carefully the terms of that licence to see where you stand.

Some of the more common exceptions are included below. Please check your national law to see what has been agreed in your country.

Fair dealing/fair use

Copyright does not prohibit all copying or replication. In the United States, the [fair use](#) doctrine permits some copying and distribution without permission of the copyright holder or payment to same. The statute does not clearly define fair use, but instead gives four non-exclusive factors to consider in a fair use analysis. Those factors are:

1. the purpose and character of the use;
2. the nature of the copyrighted work;
3. the amount and substantialness of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for or value of the copyrighted work

In the United Kingdom and many other Commonwealth countries, the similar notion of ['fair dealing'](#) is established by the courts or through legislation. Fair dealing uses are research and study; review and critique; parody and satire; news reportage and the giving of professional advice (i.e. legal advice).³

In the copyright laws of many nations, neither 'fair dealing' or 'fair use' appear although there may still be a general permission to copy for specific purposes – often for private or personal use. A general test is that as long as what is copied does not harm the interests of rights holders, then a person making the copies is usually copying fairly. Fair dealing applies to specific purposes: research or private study; criticism or review; or to report the news. In the UK a suggested fair amount to copy for research or private study without harming the interests of rights holders is 5-10%

³ This information was taken from Wikipedia (14/12/2010): http://en.wikipedia.org/wiki/Copyright#Fair_Use_and_Fair_Dealing and is made available here under the Creative Commons Attribution-ShareAlike 3.0 Unported License

of a published work or one article from a journal issue. This is suggestion only and in many cases, it could be argued that copying more would still be fair. The laws of some countries may specifically allow extents greater than these so it is advisable to check your national law. Bear in mind, also, that even a small amount could be judged as unfair if the copying harmed the interests of rights holders. The important thing is to remember is not to copy anything for purposes which would lead to personal or corporate gain as this would not be seen to be fair. Apply the above test if at all unsure.

Library privileges/Copying in education

In some countries, the UK for example, librarians are allowed to copy for certain purposes subject to very strict conditions and limits: copying for a user; replacement and preservation and for stock. Similar privileges may also exist in your country - check the law for details. There may also be exceptions for copying for instructional or educational purposes in national laws. These should also be checked.

Acceptable uses for electronic material

Note: the following guidance is given for copying and use beyond what is permitted by a publisher's licence. A publisher's licence should not normally restrict the following activity:

Viewing on screen

The operation of some computer software, e.g. Web browsers, may result in the copying of electronic documents to the user's hard disk. Where this is necessary for the efficient operation of the software, and where there is no intent to store the copy permanently, this incidental copying is likely to be seen as lawful. This would apply for viewing part or the whole of an electronic publication, and applies whether it is an individual or a librarian doing the viewing.

Printing on to paper

It is acceptable for any individual to print on to paper one copy of part of an electronic publication. This should not be a substantial part unless a separate, specific permission or licence has been obtained.

Making a copy of part of licensed material

It is acceptable for someone to make a permanent electronic copy of a single article or up to 5-10%⁴ of the length of a monograph for research or private use or for other permitted purposes allowed in national copyright laws. However, unless authorised by a contract or licence, it is not permitted to make a copy of an entire electronic publication or database. Always check your licence, if you have one, to establish terms and conditions of use.

Transmission of licensed material to enable printing

This is acceptable as long as the amount to be printed does not exceed one article from a journal issue or short extracts (no more than 5-10%)⁴ of a book and some technical controls are in place to ensure that any permanent electronic copies are deleted after the work has been successfully transmitted and printed out.

Making copies from the Internet

Many people think that anything on the Internet may be copied freely. This is not so. Works on the Internet are protected in the same way as print-based material. Some providers of web-based content do waive copyright on their material altogether (e.g. material on Government websites), or for non-commercial purposes, so it makes sense to look at any copyright notices on web pages to establish the nature and extent of allowed permissions. If in doubt, ask the website owner.

If material is difficult to access and copy, e.g. material accessed via a password, it is clear that content providers are not waiving their copyright and so conditions of use should be respected. Similarly, reading conditions of access onscreen and clicking to say that these are understood and accepted, means one has entered into a form of contract and the terms should be respected. One should negotiate with content providers for uses over and above these terms. If in doubt users should be encouraged to stick to the generally agreed fair dealing amounts used for copying from printed works.

⁴ It is best to check what, if any, percentage is mentioned in national law. 5-10% is mentioned in this context in UK copyright legislation

If multiple copying from the web is required e.g. making several copies for students in class, then this should only be done with the permission of the rights holders, either explicitly stated on the website or in writing (email).

Further information

WIPO: <http://www.wipo.int>. The World Intellectual Property Organisation (WIPO) web site has basic copyright information and details of international treaties on copyright, particularly the Berne Convention on the Protection of Literary and Artistic Works. WIPO is an intergovernmental organisation responsible for the promotion of the protection of intellectual property throughout the world through co-operation amongst nation states. It runs programmes for developing co-operation in copyright and associated rights in developing countries in order to promote respect of copyright, gives technical assistance and also helps in setting up collecting societies to collect royalty payments. One of the main objectives of WIPO is to encourage all countries to agree and adhere to the latest revisions of the main copyright conventions. WIPO administers most international agreements on intellectual property and the WIPO website contains regularly updated information on all its conventions and their signatories.

UNESCO: <http://www.unesco.org/new/en/culture/themes/creativity/creative-industries/copyright/>. The UNESCO web site is most useful for having details and links to most national copyright legislations in several languages. These may be downloaded to print.

Copyright licensing Agency (UK): http://www.cla.co.uk/copyright_information/copyright_information/. Contains extensive and very useful general information about copyright as well as specific information about copyright in the UK

University of Bath: <http://www.bath.ac.uk/library/infoskills/copyright/>. A website dedicated to enhancing understanding of copyright in the context of higher education library resources.

If you intend to use the above listing in your library, we recommend you replace or supplement it with web pages which are relevant to your country and/or language.