



General Information Concerning

COPYRIGHT AND RELATED RIGHTS



OIFIG NA bPAITINNÍ
IRISH PATENTS OFFICE

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Introduction

The information available in this booklet is not intended to be fully comprehensive; it is a general guide and is not a legal interpretation of the law relating to copyright. The booklet summarises certain important provisions and requirements of the Copyright and Related Rights Act, 2000. Some information may have changed since publication. As with all guides it, of necessity, includes a number of generalisations and simplifications and should not be regarded as a substitute for the legislation itself.

Copies of the Copyright and Related Rights Act, 2000 and secondary legislation relating to copyright are obtainable from the Government Publication Sales Office, Molesworth St. Dublin, 2, or may be consulted online @ www.patentsoffice.ie

1. What is copyright?

Copyright is the legal term, which describes the rights given to authors/creators to protect certain categories of work such as literary and artistic works. Copyright is an automatic right and there is no official registration system for copyright owners in Ireland. Copyright takes effect as soon as the work is put on paper, film, or other fixed medium such as CD-ROM, DVD etc.

The primary legislation governing copyright in Ireland is the Copyright and Related Rights Act, 2000.

2. What types of works are covered by copyright?

Copyright protection extends to the following types of works:

Original literary, dramatic, musical or artistic works

Sound recordings, films, broadcasts, cable programmes

The typographical arrangement of published editions and Original databases

Artistic works includes the following: photographs, paintings, drawings, maps, charts, plans, engravings, etchings, lithographs, woodcuts, prints or similar works, collages or sculptures, including any cast or model made for the purposes of the sculpture, works of architecture.

Literary works include computer programs. Computer programs which are given written expression in specialised languages are therefore capable of copyright protection as “literary works”.



3. Who owns copyright and what rights does it provide?

The owner of copyright is the author, meaning the person who creates the work. For example in the case of a photograph, the photographer is the owner of the copyright. However, as copyright is a form of property, the right may be transferred to someone else, for example, to a publisher. Where an employee in the course of employment creates the work, the employer is the owner of the copyright in the work, unless an agreement to the contrary exists.

Copyright is a property right and the owner of the work can control the use of the work, subject to certain exceptions which are provided for in the legislation. The owner has the exclusive right to prohibit or authorise others to undertake the following:

- ◆ It's reproduction in various forms, such as printed publication or sound recording,
- ◆ It's public performance, as in a play or musical work,
- ◆ Make the work available to the public through broadcasting or recordings of it, for example, in the form of compact discs, cassettes, DVD's or videotapes.
- ◆ It's broadcasting, by radio, cable or satellite,
- ◆ It's translation into other languages, its adaptation such as a novel into a screenplay.

4. Copyright Protection

Copyright is an automatic right and in Ireland as in most other countries there is no registration procedure for copyright. Copyright is deemed to exist from the moment of creation of the "work". Basically the act of creating a work also creates the copyright, which then subsists in the physical expression of the work.

Rights in relation to copyright, are protected by law and illegal use of these rights can be contested in the Courts, the technical term for this misuse is infringement. The legislation provides for criminal offences and consequently infringers could face both civil liability and criminal convictions.

Copyright owners should seek professional advice with regard to the options and the remedies available where infringement of their work occurs.

It is most important that the originator of a work can show subsequently when the work and the consequential copyright were created, as it may be necessary to commence or defend infringement proceedings, at some later stage. One way of doing this is to deposit a copy of the work with an acknowledged representative, such as a bank or solicitor, in such a way as to allow the date and time of the deposit to be recorded or notarised. Alternatively, one may send a copy of the work to oneself by registered post as this is a dated delivery system (ensuring a clear date stamp on the envelope), retaining the original receipt of posting and leaving the envelope containing the copyright work unopened thus establishing that the work existed at that date and time.

5. Benefits of Copyright Protection

Copyright protection provides a vital incentive for the creation of many intellectual works. Without copyright protection, it would be easy for others to exploit these works without paying any royalties or remuneration to the owner of the work. Copyright therefore encourages enterprise and creates a favourable climate to stimulate economic activity.

Copyright protection provides benefits in the form of economic rights which entitle the creators to control use of their literary and artistic material in a number of ways such as making copies, performing in public, broadcasting, use on-line, etc. and to obtain an appropriate economic reward. Creators can therefore be rewarded for their creativity and investment.



Copyright also gives moral rights to be identified as the creator or author of certain kinds of material (known as the paternity right), and object to the distortion and mutilation of it. An author's right to object to the modification or derogatory action in relation to his or her work is known as an integrity right.

6. The Copyright Notice and Symbol ©

It is important to show that copyright is claimed in a work. Works should be clearly marked to show who the copyright owner is and the date from which copyright is claimed. The internationally recognised symbol © is normally used to indicate that a work is protected by copyright.

E.g. © Copyright Sean Smith 2014.

Examples of more detailed copyright notices may be found in published versions of literary works. The inclusion of a copyright notice does not legally constitute proof of ownership, but does indicate a claim to copyright, which may prove useful if it is necessary to defend that claim or to deter possible infringement.

It is usually necessary to obtain permission to use copyright material. Persons with a copy of a work can look for an indication on the work regarding copyright. This can assist making contact with the author/ original creator of the work in order to obtain their permission to use the work for any act, which is prohibited by copyright legislation.

7. What is not covered by copyright?

Copyright does not protect “ideas”; copyright law protects the form of expression of ideas, not the ideas themselves.

It does not protect names, titles, slogans or phrases. These may be protected as trade marks subject to the provisions of the Trade Mark legislation. Logos may be protected by copyright as artistic creations, but it is advisable to consider seeking protection by trade mark registration. Please refer to the companion booklet (“General Information Concerning the registration of Trade Marks”), which is available from the Patents Office.

It is not an infringement of the copyright in a two dimensional work to make a three dimensional object if:

The object would not appear, to a person who is not an expert in relation to such objects, to be a reproduction of the two dimensional work; or

The lines, contours, colours, shape, texture or materials of the product or its ornamentation are wholly or substantially functional and more than 50 such objects have been manufactured and made commercially available by or with the consent of the owner of the copyright, with the exception that this does not apply to a work relating to a work of architecture.

Section 89 of the Industrial Designs Act, 2001 contains provisions that qualify copyright protection for designs that are exploited as products.

For further information regarding the protection of Industrial designs please refer to the companion booklet (“General Information Concerning the Protection of Industrial Designs”), which is available from the Patents Office.



8. How long does Copyright last?

The duration of copyright protection varies according to the format of the work. The table below sets out the term of protection applicable in respect of certain categories of works.

Category of work	Duration of protection
Literary, dramatic, musical and artistic works	Copyright protection expires 70 years after the death of the author/creator.
Films	Copyright protection expires 70 years after the last of the following dies, the director, the author of the screenplay, the author of the dialogue of the film, or the author of the music composed for use in the film.
Sound recordings	Copyright protection expires 70 years after the sound recording is made or if it is made available to the public then 70 years from the date it was made available to the public.
Broadcasts	Copyright protection expires 50 years after the broadcast is first transmitted.
The typographical arrangement of a published edition	Copyright protection expires 50 years after the date it is first made available to the public.
Computer-generated works	Copyright protection expires 70 years after the date it is first made available to the public.

9. Irish Copyright Legislation

The Copyright and Related Rights Act, 2000 came into effect on and from 1 January 2001.

The general objectives of the Act were as follows:

- ◆ To put in place a modern, effective, efficient, technology-neutral regime of statutory protection for copyright and related rights, including provision for civil remedies and criminal penalties fully sufficient to deter copyright theft, bearing in mind the economic and cultural significance of such theft in the context of the Information Society;
- ◆ To transpose into Irish law a number of EU directives in the field of copyright and related rights;
- ◆ To bring Irish law into conformity with all obligations incurred under international law on copyright and related rights, in particular, under the Berne Convention (Paris Act), the Rome Convention, the TRIPs Agreement, the World Intellectual Property Organisation (WIPO) Copyright Treaty, and the WIPO Performances and Phonograms Treaty, and to provide, for the first time in Irish law, for tailor-made regimes of civil protection for performers' rights, rights in performances and non-original databases in line with the best EU and international standards.

10. Rights related to Copyright

Rights are not restricted just to the creators of the works themselves but certain other rights may apply. For example, the record company has certain rights in a sound recording of the performance of a song, in addition the author(s) of the lyrics and the music will also have certain copyrights. Similarly performing artists have rights in their performances. The legislation also provides for moral rights, such as the right to be acknowledged as the author of a particular work and also the right to object to



derogatory treatment of that work. The term “Related Rights” referred to in the Act of 2000 covers a range of rights that have been derived from copyright principles

A second category of related right is that of *performers’ rights and rights in performances*. This is not a true intellectual property right, but a form of “publicity right” involving the right of performers to exclusive exploitation rights in relation to their performances, and the right of purchasers of exclusive recording rights to enforce such rights in relation to performances.

A third category consists of the “*moral rights*”, which attach both to copyright and performers’ rights. These rights confer on authors of works and performers a right to be identified as author/performer, and a right to object in law to derogatory treatment of a work or performance, subject to certain conditions. The Copyright and Related Rights Act, 2000 introduced moral rights into Irish copyright law for the first time.

A final category is that of “*sui generis*” rights related to copyright. “*Sui generis*” (translates as “one of a kind” or “unique”) rights related to copyright. Section 34 (the Copyright and Related Rights Act, 2000) states “ Any person who, after the expiration of the copyright in a work, lawfully makes available to the public for the first time a work which was not previously so made available, shall benefit from rights equivalent to the rights of an author, other than the moral rights, for 25 years from the date on which the work is first lawfully made available to the public”. This right was introduced to provide a financial incentive for publishing previously unpublished works.

In relation to Databases, copyright protection is provided to recognise the “original intellectual creation that the collection of data represents”. An additional right a “*sui generis*” or “stand alone” right recognises and protects the investment in time, labour or capital investment in establishing a database.

11. Summary of Contents of the The Copyright and Related Rights Act, 2000

PART I - Preliminary and General

This Part deals with technical and incidental issues, including interpretation of terms (principally section 2) and the power of the Minister for Enterprise, Trade and Innovation to make Orders and Regulations under the proposed legislation.

PART II - Copyright

This is the Part dealing with the substantive provisions on copyright, including the “traditional” neighbouring rights of copyright in sound recordings, films, broadcasts, cable programmes, original databases and typographical arrangements of published editions of works.

The main subjects addressed are:

- ◆ the nature of copyright works, and where copyright may be held to subsist;
- ◆ authorship of copyright works, and the duration of copyright protection in the various classes of copyright work;
- ◆ the rights of a copyright owner in relation to a work, including the exclusive right to authorise the copying (reproduction), making available to the public or adaptation of the work, subject to the provisions of this legislation;
- ◆ primary and secondary infringement of copyright;
- ◆ the various exceptions to be provided for, derogating from the absolute rights of the copyright owner in certain limited, specified cases. These are, principally, the “fair dealing” exceptions in favour of private research and study, criticism and review of works, and incidental inclusion of copyright material in another work, and limited exceptions in favour of educational and library/archival use and certain uses in public administration;
- ◆ provision for moral rights;
- ◆ provisions governing dealings in copyright interests, including assignment (normally by sale/contract) and licensing, and

- ◆ remedies for infringement of copyright interests and criminal offences and penalties in the area of copyright, and related technical issues, as well as a range of technical, incidental and subsidiary issues associated with copyright proper.

PART III - Rights in Performances

This Part provides for a regime of rights, exceptions and sanctions in respect of performers' rights and rights in performances which is broadly parallel to those provided for in relation to copyright by Part II. It should be noted that the rights protected under this Part may broadly be described as the exclusive right of a performer to authorise the copying or broadcasting of his or her performance, and recording rights (involving the rights of persons who have exclusive recording contracts with performers to protection from damage through illicit recording). Part III represents the introduction into Irish law of a comprehensive regime of protection for this category of right, including direct legal protection for performers and persons holding exclusive recording rights against illicit direct recording of performances ("bootlegging").

PART IV - Performers: Moral Rights

This Part provides for a regime of moral rights protection for performers in relation to their performances which is parallel to that provided for authors of copyright works under Part II.

PART V – Databases

This Part provides for a new regime of protection for non-original databases, as required by the EU Database Directive. "Non-original databases" are databases the creation of which does not involve significant intellectually creative input; examples would be simple alphabetical lists such as telephone directories. Up to 2000, these would have been protected under Irish law by copyright, generally, as literary works;

the definition of literary work in the Copyright Act, 1963, includes “any written table or compilation”. However, the Database Directive requires that a higher standard of originality be applied to databases if they are to qualify for full copyright protection. This Part provides for a somewhat more limited form of protection for databases no longer meeting the copyright originality standard.

PART VI - Jurisdiction of Controller

This Part makes provision for the role of the Controller of Patents, Designs and Trade Marks as a tribunal for the resolution of certain disputes regarding copyright licensing schemes.

PART VII - Technological Protection Measures

This Part provides copyright rightsholders with rights and remedies against persons who unlawfully circumvent technological measures designed to protect certain copyright materials. -



12. Some “highlights of the Act

❑ Technological Protection Measures

The Act contains new measures to protect encryption and other technological protection devices and makes it an offence to make or sell etc., protection- defeating devices such for example, counterfeit “smart cards” for tapping in to encrypted satellite broadcasts and cable programmes, and the removal of identifying “rights management” features (such as “digital fingerprints”) from copyright materials. In addition, the civil remedies provide for seizure of protection-defeating devices. These measures will be of benefit to, for example, broadcasting organisations and cable programme service providers.

❑ Internet

In relation to the Internet, there are ‘notify and take down’ provisions whereby, if infringing material is being carried on a service (for example, by an Internet service provider), and the rightsowners inform service providers that infringing material is being carried on their service, the service providers can be obliged to remove that material as soon as is practicable.

❑ Exceptions

The Act contains a number of exceptions to the acts protected by copyright and related rights. Some of the more significant aspects of the exceptions are listed below:

❑ Libraries and Archives

This Act provides that libraries and archives which are prescribed by the Minister for Enterprise, Trade and Innovation will be able to lend works without payment of royalty. These are new exception provisions which will also permit librarians and archivists of prescribed libraries and archives to copy and supply copies of works

in certain situations, and to conduct certain acts of curatorial copying, without committing a copyright infringement. The definition of archive for the purposes of the Act has been expanded to include museums within the scope of these exceptions.

❑ Schools and Educational Establishments

The Act provides for a number of exceptions for schools. Schools will continue to pay a licence fee in respect of reprographic copying, provided that the copyright owners establish a licensing scheme. Otherwise, they may copy up to 5% of a work in any given year.

❑ Provision of Modified Works for Persons with Disabilities

The Act introduces provision for the making and supply by non-profit bodies of copies of copyright works and recordings of performances for use by persons having physical or mental disabilities free of royalty without breach of copyright.

❑ Moral Rights

The Act introduces for the first time in Ireland moral rights for authors and performers. Moral rights consist of the **Paternity right** - the right to be identified as the author of a work or, where practicable, the performer of a performance and the **Integrity right** - the right to object to derogatory treatment of a work or a recording of a performance.

❑ Register of Copyright Licensing Bodies

The Act provides the Controller of Patents, Designs and Trademarks with several statutory functions concerned with the registration of copyright licensing bodies, references and applications relating to licensing schemes operated by licensing bodies and the resolution of disputes regarding the payment of royalty amounts arising in the area of public performance of sound recordings

A list of the Copyright Licensing Bodies appearing in the Register of Copyright Licensing Bodies and details of their registrations are available on the Patents Office website.

Copyright licensing societies – also known as collective management organisations – acting on behalf of their members have as their main objective the negotiating or granting of copyright licences which authorise the terms of use of a work of more than one copyright owner. In broad terms, the principle role of the Controller as laid down in the Legislation is to decide, where the parties cannot agree between themselves, the terms and conditions of licences offered by, or licensing schemes operated by, collective licensing bodies in the copyright and related rights area. In addition, the terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Controller for determination, by an organisation which claims to be representative of persons who claim that they require licences. Furthermore, anyone who considers that they have unreasonably been refused a licence by a collecting society or considers the terms of an offered licence to be unreasonable may refer the matter to the Controller.

The Controller is required to maintain a register of copyright licensing bodies which contain information prescribed under the Act, including details of the scales of charges to be levied and the class of rightsholders represented by the licensing body.

□ Remedies and Penalties

The Act strengthens the range of civil remedies available to rightsovers. It allows for civil search and seizure procedures which should greatly enhance the effectiveness of the civil remedies. It alters the evidential burden in civil and criminal proceedings relating to copyright in favour of the plaintiff/complainant rightsover, thus facilitating the protection of copyright through legal proceedings. It also contains a provision whereby witnesses in applications for search warrants in civil infringement cases will not be obliged to indicate the source of their information on that infringement, a provision which will protect the identity of persons who give information on alleged copyright infringements to the rightsholders. A typical example of the latter case would be where information is given on alleged infringements by employees of the alleged infringer. For criminal offences, the Act confirms the substantial strengthening

of penalties first introduced by the Intellectual Property (Miscellaneous Provisions) Act, 1998 and applies them to copyright and related rights offences generally.

□ Parliamentary and Government Copyright

A new Oireachtas copyright, reserved to the Houses of the Oireachtas, is introduced in the Act. This provides for copyright protection in works made under the direction or control of the Dáil and the Seanad to reside with the Houses. Amendments introduced in the Seanad also assign copyright in parliamentary Bills and enactments to the Houses of the Oireachtas. The Act also clarifies provisions relating to Government copyright, which will apply to works made under the direction or control of the Government, and which will subsist for 50 years following the creation of the work concerned.

□ Deposit of Certain Copyright Materials

Under the legislation there is a requirement that when any book is published in the State, the publisher must supply within one month of publication a copy of the book free to the following libraries

- ◆ National Library of Ireland,
- ◆ The library of Trinity College, Dublin,
- ◆ The library of the University of Limerick,
- ◆ The library of Dublin City University, and
- ◆ The Board of the British Library,
- ◆ And four copies of the book for or in accordance with the directions of the authority having control of the National University of Ireland for use in the four constituent universities of that University

In addition to the above if within 12 months a demand is received from the following libraries, then the publisher must supply a copy free to the nominated Dublin address included in the demand

- ◆ The Bodleian Library, Oxford,
- ◆ The University Library, Cambridge,
- ◆ The National Library of Scotland, and
- ◆ The National Library of Wales.

13. Droit De Suite

Droit de suite is a means of providing artists with a share of the increase in value of their art works when they are resold. When a work is auctioned subsequent to its original sale a percentage of the *resale price* is awarded to the original artist or creator of the work and not a percentage of increase in value.

Regulations, entitled the European Communities (Artists Resale Right), Regulations, S.I. No. 312 of 2006, came into effect on 13 June 2006 and provide for a new right in Irish law entitling artists to payment where their art works are resold through the art trade.

The main issues which the new Regulations provide for include:-

- ◆ artists right to benefit from the resale of his/her work (Regulation 3),
- ◆ right being non-transferrable or non-saleable (Regulation 4),
- ◆ minimum art value threshold set, for now, at €3,000(net of tax)(Regulation 5),
- ◆ benefit being confined, for now, to EU & EEA nationals (Regulation 6),
- ◆ establishment of a liability on the seller to pay the royalty (Regulation 7)
- ◆ artists right to information on sales (Regulation 8),
- ◆ royalty rates and bands for calculating amounts due (Regulation 9), and
- ◆ duration of resale right set, for now, at the artists lifetime (Regulation 10)

14. Some useful websites for copyright owners

www.patentsoffice.ie	The Irish Patents Office
www.wipo.int/sme	Intellectual property issues from a business perspective
www.wipo.org	World Intellectual Property Organisation
www.cai.ie	The Copyright Association of Ireland
www.libraryassociation.ie	The Library Association of Ireland
http://www.djei.ie/science.ipr	The Intellectual Property Unit, Department of Jobs, Enterprise and Innovation

The Patents Office may be contacted at:

Patents Office

Government Buildings, Hebron Road, Kilkenny

Tel: 056 - 7720111

Lo-call: 1890 - 220223 (within Ireland)

Fax: 056 - 7720100

Lo-call Fax: 1890 - 220120 (within Ireland)

E-mail: patlib@patentsoffice.ie

Patents Office website: www.patentsoffice.ie

The Patents Office is open to the public from 9.30 am to 5.00 pm including lunchtime.