

World Forum on Music 2007

Session: WFM – 2

Theme: Intellectual Property Rights

Title of Presentation: Copyright and Related Rights: An overview of the set of rights and their application

Name: Burak Özgen

a. Copyright as an Intellectual Property Right:

1. As the theme of this session is ‘Intellectual Property Rights’ (IPRs), I think it would be worthwhile first to appraise Copyright as an IPR. That would also help us to resolve the “maze” of legal structures from the beginning.

2. It is considered that there are two types of IPRs:

1 – Industrial Intellectual Property Rights, which comprises patents, trademarks, designs, protection of semi-conductor chips, utility models, etc. These, in general, are IPRs relating to inventions and/or industrially valuable concepts.

2 – Copyright, which comprises real copyright (literary, musical, dramatic, visual, applied, etc. arts), neighbouring rights, software and databases. These, in general, are rights in literary and artistic works.

3. In this general picture, my presentation will be about the real copyright and neighbouring rights particularly relating to music. However I will also give examples from other fields when it is needed to better comprehend the concepts.

b. Copyright – Authors’ Right:

4. What is the real difference between those two concepts, while we usually refer to ‘copyright law’ when we are talking about the protection of literary and artistic works? It is worth mentioning here why we have two different concepts for same rights. In history, the law relating to literary and artistic works has followed two different paths depending on the social and economic conditions and priorities in different parts of the world. And these were two big legal cultures, namely Anglo-American (common law) and Continental European (civil law) systems.

5. In England, as having the first written copyright law, Statute of Anne 1710, the publishers (at that time actually stationers) championed the demand for ‘a right to copy’ of the books together with the authors, in order to maintain their monopoly in publishing. And after the adoption of Statute of Anne, the authors were granted 14-year monopoly for “copy-right” of their works and this right was fully assignable to the publisher. Economical desires of the publisher not to lose their monopoly in copying the books and authors demands to own their works based on natural rights ideas established the law relating to literary and artistic works as ‘copyright’.

6. However, in the continental Europe, ‘*droite d’auteur*’ tradition has developed with the effects of ‘enlightenment’ movements, French Revolution and individual human

rights ideas, as well as Kant and Hegel's philosophies, that uplifts the value of artists and human rights. So it started as "authors' right" on his works.

In that sense we can say that the common law culture places the 'work' in the centre of protection and provides a right to copy while the civil law culture places the 'author' in the centre and protects the rights of authors in their works.

7. However, talking about the 'copyright law' in general we can assume that the issue is protection of the rights related to literary and artistic works, despite the differences in different legal cultures and national laws of the countries. This is why, in this presentation, I would like to refer to the rules laid down by the international conventions that are accepted by the majority of the countries from all around the world in order to prevent the uncertainty between the national laws to a certain level and to harmonise the minimum level of protection that is valid in all states party to those conventions. For the purposes of this presentation I will use the word 'copyright' to explain the basic notion of the protection of literary and artistic works

8. After this short instruction, I believe that it would be useful first to look at what the copyright and its basic characteristics are.

- Copyright is a set of exclusive rights conferred on authors regulating the use of their works. This means that the creator of the work decides if and how his/her work will be used.
- Copyright law covers only the form or manner in which ideas or information have been manifested, the "form of material expression". It is not designed or intended to cover the actual idea, concepts, facts, styles, or techniques which may be embodied in or represented by the copyrighted work.
- As internationally recognised, in principle, "the author's right is based upon the act of creation itself". And this means that there is no formality to be entitled for copyright. The creator of an artistic work has the copyright by the creation and once that work is fixed on a tangible form he/she can seek protection for it. In that sense copyright registration offices or symbols like "©" are just some procedures, also called as copyright notice, provided by some national laws in order to ease the proof of authorship when the rights in a work are at stake.
- The international standard for term of protection, established by the Berne Convention, is the life of the author and 50 years after his death. However, in many countries, such as in the United States and in those of the European Community, the protection is extended to 70 years after the death of the author. Once the term expires, the work enters the public domain where it can be freely used by anyone.

c. Rights Protected:

9. Coming to the point what rights are protected, there are two types of rights conferred on the authors for their creations. They are namely:

- Economic (Exploitation) rights: which values authors' works commercially and which are in part or as whole assignable or licensable to others such as music companies or collecting societies.
- Moral rights: which protects the personal and moral interests of the author in his/her work.

c.a. Economic Rights

c.a.a. Reproduction right:

10. Reproduction right simply refers to the right of the author to authorise or prohibit making copies of his works. This right consists of reproduction of physical copies of the works, such as in form of cd, tape, dvd etc, as well as any digital copying regardless being permanent or temporary and in part or as whole. When a publisher wishes to distribute printed text-based copies or any digital media or when a phonogram producer wishes to record the performance of compositions on the albums, the author exercises his reproduction right.

c.a.b. Public performance right:

11. This is the right of the author to authorise or prohibit the live performance of his work, such as the presentation of a play in a theatre or an orchestra performance of a symphony in a concert hall. Public performance also includes performance by means of recordings; thus, musical works embodied in phonograms are considered "publicly performed" when the phonograms are played over amplification equipment in such places as discotheques, airplanes, and shopping malls.

c.a.c. Broadcasting and communication to the public right:

12. It covers the broadcasting of sounds or images by radio, TV or satellite as well as any transmission of the works by wire or wireless means, which includes, for instance, cable transmission or online radios and simulcasting.

c.a.d. Making available right:

13. The exclusive making available right of the author has been recognised internationally by WIPO Treaties and then by the Copyright Directive of the European Union with the effect of the digital technologies. It is described as making the work available for the members of the public from a place and at a time individually chosen by them. And this actually covers all on-demand services offered on internet or by other digital services.

c.a.e. Adaptation and translation right:

14. The acts of adaptation, such as adapting a book into a movie, translation and making arrangements of the original works also require exclusive authorisation of the author of the original work.

c.a.f. Distribution right:

15. Since, only reproduction right without distribution right makes the right less efficient, due to the exhaustion of the rights after the first legitimate sale of the works, distribution right is also laid down in the international conventions and national laws of some countries. This is why with WIPO Internet Treaties¹ the authors are also granted to determine the way how to distribute their works in order to protect their economic interests and the territoriality of their right. In some countries, this right even includes to prohibit the importation of the works sold in another country for re-selling the same works in the country of origin of the release.

c.a.g. Rental right:

16. Rental right has become also very widely recognised by international conventions, including TRIPS Agreement, and national laws, as being an overhang of reproduction right. It is the right to authorize rental of copies of certain categories of works, such as musical works included in phonograms, audiovisual works, and computer programs. Technology enables users and consumers copy the works quite easily and that would considerably endanger the reproduction right of the author when the consumers rent the works from shops, if the control of the author in rental of his works were not protected.

c.b Moral Rights

17. Moral rights reflect the personal relation of the authors with their work and protect the authors' moral and personal interests as being the creator of the work. This first sentence of explanation hints that 'moral rights' are much more of a continental European concept as they refer to the protection of the author rather than the work itself.

18. 'Moral right' is terminologically a not very well translated version of French term '*droit moral*' into English as there was not such a concept in the Anglo-American systems. The German expression '*Urheberpersönlichkeitsrechts*' best explains the concept.

19. The value that moral rights protect is not economical but personal, such as the honour or reputation of the author. This is why, in principle, moral rights are, as opposed to economic rights, not transferable or assignable to someone else. They can only be waived under some restricted conditions, however in any case, without being in prejudice with the honour and/or reputation of the author.

c.b.a Attribution (Paternity) right:

20. Right of attribution gives to the right-holder the right to be identified as the author of his work. This right also covers the right to keep his identity anonymous or pseudonymous. Another reflection of this right, which is sometimes referred as a separate right, is not to be falsely attributed with a work. The claims concerning the paternity right usually brought in the 'ghost writer' cases, where the secret writer of

¹ WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) of 1996.

the book wants to disclose his/her name after the work gains big success. Recently, the use of attribution right becomes more important for the international licensing contracts by which the works of the author are made available or communicated to the public in the digital era without identifying the author adequately, even when the economic rights have successfully been licensed.

c.b.b Integrity right:

21. Right of integrity is the right of the author to object to derogatory treatment of the work which amounts to a distortion or mutilation or is otherwise prejudicial to the honour or reputation of the author. This part of the right, although it seems very similar to adaptation or arrangement right, which is an exploitation right, should be considered as a personality right of the author, which is to be used where a version, adaptation or performance of his work exercised in a way that substantially damages the honour and reputation of the author or is remarkably in contradiction with the soul and intention of the work. For instance, covering some body parts of a 'nu' painting when it is exhibited, or the use of a song by completely changing the spirit of it e.g. as a funny ring tone or commercial beyond the authorisation for adaptation. A simpler example could be not allowing an unfaithful adaptation of a book into a movie.

c.b.c Divulcation (Disclosure) right:

22. Divulcation right is the right of the author to determine when to have his work published. This is intended to prevent the use of the artistic work in public before the author thinks that it is ready to divulgate and on this way not to harm author's personal relations with the work by making it public before the author has expressed itself as he wanted. A case took place in the Netherlands where this right was successfully exercised. A famous painter threw away some of his drawings since he did not like them. By chance, a collector saw the paintings in rubbish as he passed by and recognised the style of the painter and took the drawings immediately. He exhibited the drawing in the reception of his new gallery to which the painter was also invited. As the painter saw his drawing shown to public he protested and wanted to have his works removed from the exhibition. In the discussion ended up before the court, judge decided that the painter has never divulgated his work and so has the right to prevent its exhibition.

c.b.d Withdrawal (Repentance) right:

23. Right of withdrawal is the right of the author to withdraw or change his works even after they are legitimately published. This is only possible where the author claims that his ideological and scientific opinions have completely changed or are proven wrong. This was also used couple of times but only for the books with ideological content where some communist writers wanted to withdraw some of their works in Germany under the Nazi government. The judges of that time did not accept this claim stating that only the society changed but not their opinions. However, this option is recognised as one of the moral rights of the authors. The writer shall compensate the publisher for any relevant losses for the exercise of this right.

24. The first two of the above rights are also secured by the Berne Convention as minimum standards, which provide an international protection for the authors where

their works are used in the countries other than their country of origin. And the member states of the European Union, as being party to Berne Convention and WIPO Copyright Treaty, are under the obligation to protect at least the right of attribution and integrity right of the author. Where France has all of the four rights in its legislation, the UK, as coming from copyright culture, recognised only the first two to be in compliance with the obligations arisen from the international law.

d. Neighbouring Rights

25. Since ‘copyright law’ alone, as briefly outlined above, cannot protect all activities and investments in the field of literary and artistic works, the remaining area for a full protection falls under the scope of the neighbouring rights or also known as ‘rights related to copyright’ or ‘related rights’. It is used as ‘*droit voisins*’ in France and ‘*verwandte Schutzrechte*’ in Germany and it refers to rights that are not copyright but related or neighbour to copyright.

26. The owner of these rights do not take part in the actual creation of the musical work, for instance by composing the music or writing the lyrics, but they add their artistic value to the work by performing it or by recording or producing the work on the best way to be made available to the public. As their artistic, creative and technical skills make the work reach the public, their endeavours are not considered as a ‘work’² under copyright law but qualified for protection as a related right to copyright.

27. As recognised for the first time at international level by Rome Convention in 1961, there are three group of rightholders entitled to the neighbouring rights:

- Performers
- Producers of phonograms
- Broadcasting organisations

28. Once again we can presume that neighbouring (related) rights as a separate regime is much more of a civil law concept, as the right is defined on the right-owner. This does not mean that the rights of performers or producers of phonograms are not being protected in Anglo-American countries. They have had a certain protection for the performers and recording companies, however the protection has still been related to the right to copy instead of a separate regime. With the effect of the international conventions, such as TRIPS Agreement, WIPO Performers and Phonograms Treaty (WPPT) and harmonisation of laws under the European Union, though, we can definitely consider that neighbouring rights are also embraced by the common law countries, at least at minimum standards.

29. The term of protection granted for the performers ‘*shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed in a phonogram*’ and for the producers of phonograms it is, ‘*at least, until the end of a period of 50 years computed from the end of the year in which*

² Work is, here, used as the product of an intellectual creation of the author, which posses the originality and artistic and literary value to be entitled to copyright protection. In this presentation, the word ‘work’ is sometimes used also to refer to intellectual and artistic endeavours that is entitled to related rights protection.

the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the fixation was made pursuant to Article 17 of WPPT. And the minimum duration of protection for broadcasting organisations, according to Art 14 of the Rome Convention, shall last, at least, 20 years computed from the end of the year in which the broadcast took place.

d.a Neighbouring rights of Performers:

30. The rights of performers are recognized because their creative intervention is necessary to give life, for example, to musical works, dramatic and choreographic works, and motion pictures, and because they have a justifiable interest in legal protection of their individual interpretations. As once stated by an author; where the author has a creative effort for an artistic work, the performing artist has an interpretive role to convey the work to the public.

d.a.a Economic rights:

30. As being the most recent international convention on the performers' rights and rights of the producers of phonograms, WPPT provides for the performers an exclusive right to authorise:

- As regards their performances:
 - i) Broadcasting and communication to the public of their live and unfixed performances
 - ii) Fixation of their unfixed performances
- Reproduction of their performances fixed in phonograms, in any manner or form, including digital reproductions.
- Distribution of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership.
- Commercial rental to the public of the original and copies of their performances fixed in phonograms, even after the distribution of them. Even though this is a minimum standard under the convention, the national law systems providing a single equitable remuneration instead of exclusive right of authorisation, prior to 1994 has also been considered in compliance with the agreement as long as they do not prejudice the rights of the performer.
- Making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

31. As regards the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public the performer and the producer of the phonogram shall enjoy the right to a single equitable remuneration. This means that the broadcasting and communication to the public of the published phonograms are not subject to authorisation of the performer and that they are subject to non-voluntary licences. However the commercial users of such phonograms shall pay a single remuneration fee to be equitably divided between the

performer and the producer of phonogram. The convention also gives to the Contracting Parties the possibility of reservation with regard to this provision, so that to limit the exercise of the rights to certain ways of uses or not implementing the provision at all. For instance the performers and the producers of phonograms in the USA are not entitled to receive any royalties for the use of their (performances fixed in) phonograms in online and digital radios.

d.a.b Moral rights:

32. Under the WPPT, the performers are granted two moral rights, namely

- Attribution right
- Integrity right

33. The duration for the protection lasts also after the death of the performer, at least as long as the term of economic rights. It can be performed by the heirs or the organisations that granted the right after the death of the performer.

d.b Neighbouring rights of Producers of Phonograms:

34. The rights of the producers of phonograms with regard to their phonograms have also been recognised, for the first time, by the Rome Convention. Then, the other international conventions, namely Phonograms Convention, TRIPS Agreement and lastly WPPT has reiterated and expanded the effect and the scope of the rights of the producers of phonograms.

35. The rights of producers of phonograms are recognised because their creative, financial and organizational resources are necessary to make recorded sound available to the public in the form of commercial phonograms, and because of their legitimate interest in having the legal resources necessary to take action against unauthorized uses, whether it be through the making and distribution of unauthorized copies (piracy) or in the form of unauthorized broadcasting or communication to the public of their phonograms.

36. In line with that, under the scope of WPPT, producers of phonograms are granted the exclusive right of authorising:

- the reproduction
- the distribution
- commercial rental
- making available to the public

of the phonograms they produced. They are also entitled to the right to single equitable remuneration, together with the performers, for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

d.c Neighbouring Rights of the Broadcasting Organisations:

37. The rights of the broadcasting organisations with regard to their broadcasts have also been recognised by the Rome Convention, for the first time. Then the Satellite Convention in 1965 extended the scope of the international protection of broadcasts to

the cable distribution. As technology progresses, new definitions for the transmissions and re-transmission of broadcasts are required due to new possibilities; such as podcasting and internet simulcasting. A discussion is still going on at WIPO level concerning the new scope of the protection of broadcasting and cablecasting organisations.

38. The rights of broadcasting organizations are recognized because of their role in making works available to the public, and in light of their justified interest in controlling the transmission and retransmission of their broadcasts.

39. According to the Art 13 of the Rome Convention, broadcasting organisations are granted a minimum right to authorise or prohibit:

- the rebroadcasting of their broadcasts;
- the fixation of their broadcasts;
- the reproduction of fixations, made without their consent, of their broadcasts;

e. Collective Management of Copyright and Neighbouring Rights

40. We have seen that the holders of copyright and neighbouring rights have the exclusive right to authorise and prohibit the use of their works or to be remunerated for the uses of their works. In the field of music, an author can negotiate with a music company to record his works and publish them or a performer can individually agree with the conditions in which he will perform the music. These part of the authors' right can be exercised individually by the author himself.

41. However, the exclusive right of the author covers all kinds of uses of his work and other cases show that individual management of rights is virtually impossible with regard to certain types of use for practical reasons. For instance, an individual author would not possibly be able to monitor each use of his works in every TV channel, radio station, online music service, bars, and discotheques. Firstly this would be really expensive and then so much time consuming and probably materially impossible, as well as being extremely impracticable for all those broadcasting organisations and other users to contact the relevant authors for each piece of music they are intended to use.

42. This very impracticability of managing these activities individually - both for the rightholders and the users - creates a need for collective management organizations, whose role is to bridge the gap between them in these key areas, among others. On this way, collective management organisations (collecting societies) for the benefit of authors and for the ease of the users undertake the activities, such as:

- collection of royalties and distributing it to the authors;
- legal support, such as drawing up of model contracts, issuing licences and authorising uses; negotiate rates and terms of use with users;
- political action in favour of the effective protection of author's rights; such action can be undertaken before national or international bodies representing the author's right community, be it governmental or non-governmental;
- social and cultural action, promoting author's interests and safeguarding their well being.

43. Collecting societies are established by the rightholders in the field in which they operate, e.g. by the authors (and also by the authors and publishers), performers, producers of phonograms. And they manage the following rights:

- The right of public performance (music played or performed in discotheques, restaurants, and other public places);
- The right of broadcasting and communication to the public (live and recorded performances on radio and television, by wire or wireless means);
- The mechanical reproduction rights in musical works (the reproduction of works in CDs, tapes, vinyl records, cassettes, mini-discs, or other forms of recordings);
- The performing rights in dramatic works (theatre plays);
- The right of reprographic reproduction of literary and musical works (photocopying);
- Related rights (the rights of performers and producers of phonograms to obtain remuneration for broadcasting or the communication to the public of phonograms).

44. Collecting societies are (at least has been so far) competent to operate only in the country they are established. This is based on the territoriality of the copyright laws and sovereignty of the countries in establishing such organisations (competent in managing rights of a group of people) in their territory. In addition to that the ‘national treatment’ principle enshrined in the Berne Convention provides that foreign right owners are treated in the same way as nationals. Thus, within the boundaries of its country, a collective administration organisation will apply the national legislation in the field of copyright and related rights with regards both to national and foreign artists.

45. And the worldwide umbrella organisation of collecting societies CISAC, ‘Confédération Internationale des Sociétés D’Auteur et Compositeur’, fosters a global network of collective administration organisations, within which this principle is upheld under reciprocal representation agreements. They allow organisations to administer foreign repertoires on their national territory, exchange information and pay royalties to foreign right owners.

e.a How does the collective management work:

46. In general, we could say that the collective management of musical works, is based on 4 pillars, that are

- documentation/registration
- licensing
- collection
- distribution.

47. Literally, everything starts with the creation of the musical work. And as soon as it is transformed into a tangible copy, all the rights accruing on the copyrighted work becomes enforceable. As regards collective management, first, the author needs to register himself and his works to the collecting society. A detailed documentation held by the collecting society is the ground to carry out the collective administration.

Only after having the complete files of its member rightholders and the repertoire they represent, the collecting society can start to collectively manage the rights.

48. Having that documentation, collecting societies, as being the representatives of the rightholders, negotiate with the commercial users (TV-radio stations, bars-restaurants-discotheques, etc.) to determine the tariffs for the relevant uses of the repertoire and the conditions in which the repertoire can be used. In some cases, such as compulsory/non-voluntary licenses, the law prescribes the relevant tariffs.

So, the works are licensed for the use of those commercial users. And through commercial users, the musical works reach to the public at different places and by different ways of communication.

49. Then the next step consists of collecting the royalties, which the user has agreed to pay. In case of non-payment, the authors' society will act on behalf of the affected author and if so needed, the authors' society will defend its case before a court of justice. Through this representation, some collecting societies can even enforce the moral rights of the authors.

50. Once the royalties are collected, the society, after having deducted a fee for its administrative costs, is responsible for distributing the sums to the individual right owners in such a way that everybody receives the share that he or she is entitled to. Collecting societies use, with the initiative and support of CISAC, electronic identification and common information systems for a unique identification of the creative works and of their creators. These are made available in a globally accessible network of databases in order to be able to perform the distribution task more accurately.

51. In the field of neighbouring rights, in most countries, the tariffs are determined by national legislations, as they are entitled to receive a single equitable remuneration from the communication to public right with respect to their performances and phonograms. According to the provisions of national laws, those remunerations are collected either by the same society representing both the performers and the producers or societies representing them separately depending on the rules regulating the relation between them.

52. It is to be noted that some (most) of the collecting societies also deducts a percentage, not exceeding 10%, from the royalties they have collected to generate welfare schemes for their members, or cultural funds to support the musical life in their territories. This provision, while being the only source for such expenses in some countries and maintaining the existence of some small and medium sized collecting societies, is also criticised, especially in the EU, as being against the national treatment principle.

A Short Glossary of Copyright Terms:

Assignment

Assignment is the transfer of copyright from the owner to a second party. Only the economic rights in the copyright can be assigned, since the moral rights are not assignable due to their personal character. In Germany and Austria, assignment of copyright is not possible as a concept, since the economic and moral rights are not separable according to their monist system.

Author

An author is the natural person who has created a work. He/she has an exclusive right if or how to use his/her work. The economic right to a work can be bequeathed or transferred but not the moral right. The person or business to whom a copyright is transferred becomes the new rightholder, but not the author. The author can only be the natural person who participated in the creation of the work.

Author's Right

The area of law protecting authors of original works, providing them with economic (commercial use) and moral (authors' personality) rights; the concept used in civil law systems.

Authorship

Term signifying human creator(s) of original works of intellectual property; an employer may also be recognized as the author of a work prepared within the scope of an individual's employment.

Blanket License

An annual license in return of a flat fee allowing music users such as television and radio stations, universities, restaurants and music services to perform musical works in repertoire represented by a collecting society (including the representation through reciprocal agreements) as often as desired.

Collecting society

The collecting society is a union of authors and owners of copyrights and related rights. The main purpose is the collective management of these rights and the collection and disbursement of royalties.

Collective management

This refers to the management of copyrights for a group of rights holders, and the collection and distribution of the royalties collected by the societies.

Communication to the public right

The right to authorise or prohibit any communication to the public of a protected work, by wire or wireless means.

Copies

Copies are material objects, other than phonograms, in which a work is fixed by any method now known or later developed and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine

or device. The term includes the material object, other than a phonogram, in which the work is first fixed.

Copyright

(1) In its broadest sense, the area of law or the right dealing with the protection of authors' works and of productions of modern technology incorporating such works, such as sound recordings, films and broadcasts.

(2) As descriptive of the system of law applying in the common law countries (UK, Commonwealth, Ireland, US, etc) for the protection of authors' works (and in some cases other material), as opposed to the 'author's right system' applying in civil law countries (France, Germany...).

Copyright exceptions

Exceptions to copyright protection are made in order to protect important third-party interests. For example, protecting uses for the private sphere, uses assisting the handicapped, or certain uses with educational purposes or in newspapers.

Derivative work

A work based upon one or more pre-existing works; such as a translation, dramatization, musical arrangement, etc.

Digital rights management

Digital rights management (DRM) makes it possible to electronically manage and control the usage of digital content and the rights in the content.

Digitalisation

Digitalisation is transforming analogue information such as text, picture and sound into an electronic form which can be saved and edited in any way and without loss of quality.

Downloading

The process of taking a copy of a digital file and keeping it on your local hard drive.

Fair use

A concept of copyright law, that is used in US law for 'exception', in which a limited copying of copyrighted material is permissible under some circumstances such as criticism, comment, news reporting, teaching, scholarship, or research, is not an infringement of copyright. Factors to be used in determining if usage is fair use include: the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes; the nature of the work; the amount work used; and the market value impact on the copyrighted work.

Infringement

Violation of the exclusive rights granted by the copyright law.

Intellectual property

The legal protection of industrial property (which includes patents, trademarks, designs and plant varieties) and copyrights and related rights is regulated under the laws concerning intellectual property. These rights basically create an exclusive right to intellectual products, which is why they are referred to as intellectual property.

License

A license is the grant of permission to use a copyright work for a specific and limited use. A license does not convey the transfer of ownership in the copyright, assignment of ownership in the copyright, or the right to use the work in any fashion other than the use specifically granted.

Literary works

Any work, other than dramatic or musical work, which is written.

Making available right

On the way of online exploitation or the on-demand service is the right to communicate to the public a work, by wire or wireless means, in a way that allows access at any time and from any place (interactivity).

Mandatory collective management

It occurs when right holders are legally bound to assign or transfer their rights to a collecting society.

Mechanical right

The right to mechanically reproduce an authors' work on a sound recording (CD, Vinyl, tapes).

National Treatment

National Treatment is the principle accepted by all countries party to Berne Convention, Rome Convention, and/or the Universal Copyright Convention, extending the copyright protection enjoyed by the citizens of and residents in a country to nationals of other countries that are party to the agreement. That means that for instance a German citizen is protected by the provision of the Chinese copyright act for any infringement that may take place in China.

Neighbouring rights

The rights which depend on a previous work from an author; they include the rights of performers, broadcasters and phonograms producers.

Phonogram

The physical object on which copyrighted sounds are fixed, which includes cassette tapes, CDs, LPs, 45 r.p.m. disks, as well as other formats. Soundtracks of audiovisual works are excluded from this group.

Performers

The actors, singers, musicians, dancers or other persons who act, sing, or otherwise perform literary or artistic works.

Private copies

Copyright allows making private copies; for example, copying a work for personal use on another player or for a close circle of friends.

Public domain

Public domain refers to content, such as books, music or software, which is freely available. It is not protected by copyright because none ever existed (i.e., the content is not considered a work), because the term of protection has expired (e.g., Goethe's works), or because it is exempt under copyright (e.g., legislative texts).

Reciprocal representation agreement

A contract between two collecting societies whereby the societies give each other the right to grant licences for any public performance of copyrighted musical works of their respective members.

Reproduction right

Right to authorise the direct or indirect copy and fixation of a work.

Royalty

Share of profit paid to copyright holder based on proceeds that result from the use of his or her work.

Technological measures

Technological measures refers to specialized hardware and/or software technology designed to prevent users from gaining unauthorized access to digital content or making unauthorized copies of content. Copy protection on audio CD's, regional codes on DVD's and password protection for online music store access are examples.

Simulcast

Simultaneous transmission by radio and TV stations via the Internet of sound or audiovisual works included in their broadcasts of radio and/or TV signals.

Webcasting

The use of streaming technology to create an internet service equivalent to broadcasting.

WIPO

The World Intellectual Property Organization, commonly known as WIPO, is a subsidiary organization of the UN. Its headquarters are in Geneva. Its primary task is to promote the protection of intellectual property worldwide through international agreements and treaties and to supervise the UN member states which have signed the intellectual property agreements. In copyrights, WIPO administers various treaties including the revised Bern Convention, the Rome Convention and the WIPO Internet Treaties.

Works

In order for a product of intellectual work to qualify for protection under copyright, certain legally defined conditions must be met. Protection only applies to intellectual creations of literature or art which possess an individual and unique character and, thusly, the quality of a work.