

Copyright Law



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European Copyright Law

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Intellectual Property Rights (IPR)

Divided in two groups

- Copyright
 - Literary and Artistic Works
 - Related Rights
 - Performing artists, producers of phonograms and films and radio corporations
- Industrial property
 - Patent/Models (new)
 - Design (new)
 - Trade marks (distinguish)



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The copyright structure

- Copyright is a national right
 - International conventions
 - Berne Convention(1886)
 - Trade Related Aspects of Intellectual Property Rights including Trade in Counterfeit Goods, TRIPs (1995)
- Regional harmonisation (EU)



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The copyright structure

- EU legal framework – directives
 - Copyright in the Information Society
 - Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society (INFOSOC)
 - Orphan works
 - Rental and lending rights
 - Term of Protection
 - Satellite and Cable
 - Resale right
 - Protection of Computer Programs
 - Protection of Databases
 - Enforcement



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The copyright structure

- 1) Protection
- 2) Use of protected work
 - Legal limitations/exemptions
 - Agreements
 - Implied, written, etc.
- 3) Sanctions

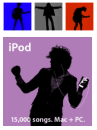




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The copyright structure

- What is protected?
 - An *expression* in a particular form
 - Not facts, ideas, mathematical theories, etc. as such
 - That is expressed in an *original form*, i.e. marked by the personality of its creator





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The copyright structure

- When is the work protected?
 - Automatic protection (created)

Copyright © (first date of creation) (name of author/owner)



Copyright © 2012 Sanna Wolk



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The copyright structure

- What is protected under copyright laws?
 - Literary and Artistic Works
 - Related Rights



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Literary Works

- Literature
 - Books, poetry, fairy-tales
 - Letters
 - Texts of songs
- Scientific works
 - Articles, handbooks,
 - Education materials, thesis
 - Dictionaries
 - Maps
 - Interviews
- Computer programs and databases



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Artistic Works

- Work of art
 - Painting, drawings
 - Photographs, graphics
 - Sculptures
 - Furniture, jewellery, cloths, textiles
 - Architecture
- Music
- Films
 - Drama, sitcoms, documentary, advertising
- Stage works
 - Drama, opera, musical



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Lucasfilm Limited v. Ainsworth [2011] UKSC 39



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Related Rights

- Performing artists
- Non-original pictures
- Producers of phonograms, films etc,





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What ever form of expression!

13 years old boys essay (SMS):

"My smmr hols wr CWOT. B4, we used 2go2 NY 2C my bro, his GF & thr 3: kids FTF. ILNY, it's a gr8 plc..."



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What ever form of expression!

Translation

"My summer holidays were a complete waste of time. Before, we used to go to New York to see my brother, his girlfriend and their three screaming kids face to face. I love New York. It's a great place..."



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Jonas Lemberg

Synabocken, William Holman Hunt 1827-1910

Synabocken, Markus Andersson



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The copyright structure

- What is the term of protection?
 - Bernconvention
 - 50 years after †
 - EU
 - 70 years after †
 - 50/75 years for related rights
 - 15 years for databases



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The copyright structure

- What does copyright afford the author?
 - Economic rights
 - Moral rights



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Economic Rights

- Reproduction right
- Right of communication to the public
- Right of making available
- Distribution right





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Economic Rights

- Reproduction by any means and in any form
 - direct or indirect
 - temporary or permanent

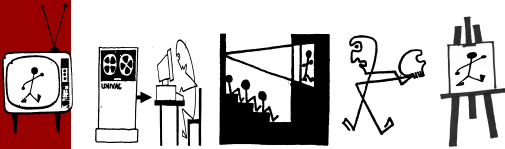




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Economic Rights

- Right of communication to the public and right of making available





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Communication to the public

- Art 3.1 in the Infosoc Directive states:
 - 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*.



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Communication to the public

- When is it a new public?
- CJEU has discussed the term in:
 - Different technical means and a new public:
C-306/05 (Rafael Hoteles), C-136/09 (Organismos Sillogikis), C-607/11 (TVCatchup)
- Same technical means and a new public:
 - C-466/12 (Svensson et al), C-348/13 (BestWater)

• Also see C-403/08- C-429/08 Football Association Premier League and C-431/09 and C-432/09 Airfield/Canal Digital



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Linking and streaming

C-466/12 Svensson [2014]
C-348/13 BestWater [2014]

```
graph TD
    A[Another technic?] -- Yes --> B[Authorisation is required]
    A -- No --> C[Same public  
- no authorisation is required  
Technical measurers?]
    C -- Yes --> D[Authorisation is required]
    C -- No --> E[No authorisation is required]
```



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Economic Rights

- Distribution right
 - Sale, rental, lending etc.
- Free movement (exhaustion)
 - CJEU C-419/13 (Allposters)
 - CJEU C 128/11 (UsedSoft)





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Economic Rights - example





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Moral Rights

- Paternity right
- Integrity right





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Moral Rights - example



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Use of protected works

- Legal exemptions
- Agreements
- Ownership
- Technical measures
- Blocking and filtering



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Exemptions

- Limited (legal) exceptions and limitations
 - To find a balance between creators and users, copyright legislation comprises exceptions to author's rights. The list and scope of these exceptions vary from one country to another
 - The Infosoc directive harmonises only very partly the exceptions regime
 - Private use
 - Public interests
 - Political speeches, court decisions, quotation, parody/satires, some types of use of copyrighted works for teaching purposes, news, libraries etc.



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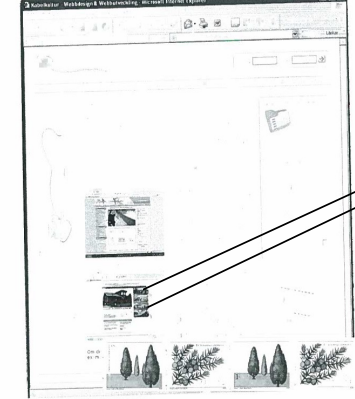
Exemptions

- Public interests (non-commercial)
 - Temporary acts of reproduction
 - Quotations
 - Architecture, sculpture, etc. in public places
 - Caricature, parody or pastiche
 - By libraries, educational establishments, archives
 - By the press
 - For people with a disability
 - Political speeches
 - In the background, minor part of a picture



The pictures

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The pictures

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Exemptions

- CJEU C-201/13 (Deckmyn v. Vandersteen)





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Agreements

- Individual
- Collective
- Implied
- Orphan works
- Creative commons (CC)





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Ownership

People typically need to know who owns what for two reasons:

1. They are creating a work, either alone or in collaboration with others, and want to know who will own what or who will have what rights in the finished work.
2. They want to use another's work and need to know whom to ask for permission.



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Employee's creations

In Roman law countries, the principle is that the copyright owner is the creator, employees included (*Germany, France and the Nordic countries*).

Under the common law system, the first owner of the copyright is the employer (*UK, the Netherlands and US*).



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Employee's copyright

There is no harmonisation regarding the ownership of copyright on employee creations in Europe, with the exception of computer programs.

The Directive states that the employer may exercise the patrimonial rights related to computer programs created at work by an employee (unless the working contract expressly states otherwise).



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Employee's copyright

A transfer of employees' rights in a work can be made by means of a collective agreement or individual employment contracts.



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Employee's copyright

In situations in which nothing has been expressly agreed, a transfer can apply *implicitly* in certain cases by virtue of the nature of the employment relationship. In such cases, guidance should be sought in the nature of the employment relationship as well as the general terms and customary practice applicable in the sector.



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Technical measures

- Circumvention and manipulation of such measures are prohibited



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Example: filtering and blocking

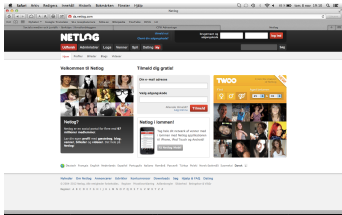
- Technical (hosting) service providers
 - Internet providers, social networks, aggregator sites, search engines etc.
- Content publishers
 - Newspapers, companies websites etc.



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Filtering and blocking

- When do service providers or social medias have an obligation to filter and block illegal copyrighted works?





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Filtering and blocking

- C-314/12 UPC Telekabel [2014]
- EUD C-360/10 SABAM [2012] and EUD C-70/10 SABAM [2011]
- Filtering system = preventive monitoring
 - Identify (within all of the electronic communications of all its customers)
 - Determine (which files are stored and made available to the public unlawfully)
 - Prevent (block file-sharing/uploading etc.)



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Filtering and blocking

- A delicate balancing act

copyright $\longleftrightarrow$ other fundamental rights

- IPRs not absolutely protected
- IPRs must be balanced against the protection of other fundamental rights



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Filtering and blocking

- The balancing act
 - General monitoring is prohibited
 - Serious infringement of the freedom to conduct its business
 - Infringe the customers right to protection of their personal data and their freedom to receive or impart information



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Filtering and blocking

- ISPs and social networks cannot be required to install filtering systems if
 - applies indiscriminately to all its customers;
 - as a preventive measure;
 - exclusively at its expense; and
 - for an unlimited period



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Sanctions

- Injunction
 - The court stops the defendant from continuing or beginning an infringement of an IPR when a decision has been taken finding an infringement of an intellectual property right
- Border measures
 - Customs authorities seize of infringing goods
- Damages
 - Monetary compensation for the loss the right holder has suffered, may include the profits the infringer has made from the infringement



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Sanctions

- Destruction (of the infringing goods)
- Publication of court decisions
- Penal sanctions
 - Criminal law generally only of interest in clear cases of counterfeiting and piracy



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Thank you!

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