

Copyright

in 28 jurisdictions worldwide

Contributing editors: Stuart Sinder,
Jonathan Reichman and James Rosini

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Overview

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There is no single international copyright law. Rather, international copyright law is comprised of a variety of domestic laws, as well as regional, international and bilateral treaties and agreements. As a result of the Berne Convention, as well as growing awareness of the importance of uniformity in light of an increasingly globalised economy, these various laws, treaties and agreements exhibit many common doctrines and principles.

All of the jurisdictions under review explicitly provide copyright protection for a broad range of subject matters, including literary works, musical works, dramatic works, computer programs, cinematic works, artistic works, sculptural works, architectural works and photographic works. Conversely, there is great uniformity in denying protection to ideas, scientific or historical data, official documents, mathematical concepts, procedures or parts of larger works that consist of those elements. At least one jurisdiction makes clear through statutory language that concepts or principles upon which any element of a computer program is based are not copyrightable.

There is also significant uniformity regarding the date upon which copyright protection begins. In all of the jurisdictions under review, copyright protection begins the moment the work is created. Where the parties diverge, however, is with regard to a fixation requirement, that is, whether it is necessary for the work to be fixed in a tangible medium of expression. With regard to ownership of the resulting copyright, most jurisdictions make it clear that the author or creator is the owner of the copyright, although one jurisdiction provides that ownership is accorded to the individual who registers the work. The jurisdictions vary with regard to an employer's ability to claim ownership of the copyright of a work created by an employee. A number of jurisdictions provide that the employer automatically owns the copyright if the work was created in the normal course of the employee's business activities, unless the parties agree. On the other hand, an almost equal number of jurisdictions hold that the copyright can only be transferred to the employer through express language within an employment agreement or other contract. However, many of the jurisdictions in this latter category create an exception for copyright in computer programs and databases created in the course of employment, giving automatic ownership to the employer. Separately, some jurisdictions give the employer an automatic right to use the work (ie, a compulsory licence) while the employee retains title ownership.

Moral rights generally recognise the author's parental and dignitary rights associated with their power to control what others do to the work or how they use the author's name. Many jurisdictions hold that moral rights can never be transferred. Accordingly, even after the author transfers the copyright through a written agreement, he or she will still retain the right to prohibit any use of the work that would distort the work, or its authorship, or reflect poorly on the author. However, although moral rights cannot be assigned, they may be waived for specific purposes in many jurisdictions.

Moral rights appear to mark a key division in the jurisdictions. Specifically, the United States lacks a tradition of moral rights. To ensure its compliance with the Berne Convention, the United States added section 106A (Rights of Certain Authors to Attribution and

Integrity) to the United States Copyright Act. This section provides narrower protection than the moral rights generally protected in other jurisdictions; it only applies to works of visual art existing in a single copy or a limited addition of up to 200 signed and numbered copies and only subsists while the author is alive. Nonetheless, when the United States joined the Berne Convention in 1989, the US Congress noted that other laws – such as section 43(a) of the federal Trademark Act – may provide protections equivalent to the broader moral rights recognised in other jurisdictions.

Another key division among the jurisdictions is with regard to fair use. The fair use defence allows third parties to freely use portions of the protected work, including direct quotes, for the purposes of commentary, criticism, news reporting and scholarly reports. In the United States, the fair use defence is relatively broad, but in a number of other jurisdictions, the concept of fair use per se does not exist. In general, however, virtually all of the other jurisdictions allow third parties to make some limited use of a work, generally for informational, non-commercial purposes that do not adversely affect the author's ability to exploit the work. In addition, a number of other jurisdictions allow limited copies of a published work to be made for various non-commercial purposes.

In all of the jurisdictions under review, copyright infringement generally occurs when a party exercises one or more of the copyright owner's exclusive rights to the work without authorisation by the owner. In those jurisdictions that protect moral rights, copyright infringement can occur when the author or creator's moral rights are violated. In one jurisdiction, copyright infringement also occurs when a party uses the image of a person without the authorisation of that person or his or her successors. In addition, in certain jurisdictions, the importer of an unauthorised work will be liable for copyright infringement if he or she knew or had reason to know that the imported work was unauthorised. A number of jurisdictions mention that the unauthorised work need only be similar, not identical, to the original for infringement to be found.

The jurisdictions allow for a variety of remedies for copyright infringement, including temporary and permanent injunctions; the confiscation and destruction of both the infringing goods and the means for producing such goods; as well as monetary remedies. There is significant variation among the jurisdictions, however, with regard to the time in which an action for infringement must be brought. The statutes of limitations vary between one and 10 years, whereas at least two jurisdictions have no statutes of limitations, although the copyright owner may substantially reduce his or her chances of recovery by tolerating a known infringement for an extended period.

In general, it appears that there are significantly more similarities than differences among the jurisdictions. The two major differences appear to be with regard to the treatment of moral rights and the doctrine of fair use, as between the United States and a majority of the other jurisdictions. As more and more works are distributed on a global basis, especially via the internet, greater copyright harmonisation will serve to foster a truly global economy.



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