# **Aspects of Copyright**

## **The purpose of copyright**

There are two main rationales for the purpose of copyright. One is that copyright induces and rewards creators by providing certain exclusive rights, to create new works and to make them available to the public. The creator gets economic rewards and the public gets to enjoy the work (although, it is important to remember that a creator has no obligation to publish a work and an unpublished work gets the same protection as a published work). This approach is called the utilitarian rationale. The other primary rationale is called the author’s right. It is based on moral rights, which ensure that authors are attributed properly and that the integrity of their works is preserved (for example that the work is not modified in a way that would be prejudicial to the author's literary or artist reputation.)

## **What is copyrightable and what is not**

Copyright protects the expression of ideas, not the ideas themselves. Also, facts are not copyrightable (but the expression of those facts may well be). Some countries exempt from copyright content produced by public authorities, for example in Finland section 9 of the Copyright Act specifies laws, government decrees and decisions etc. exempt from copyright.

In order for a work to gain copyright protection, it must have a sufficient level of originality. In Finland this has been interpreted to mean that no other person would come up with the exact same work.

## **The relationship between copyright and other intellectual property rights**

Copyright protects expressions of ideas but there are also other kinds of intellectual property rights.

Copyright-like rights called similar and related rights protect broadcasters and performers, who are not the creator of a work but are involved in communicating the work to the public. A simple example would be the case of a song, where the composer holds the copyright to the song while the recorder and performer hold the related rights in the recorded performance.

As for other types of intellectual property rights, patents and trademarks are the main ones. Patents protect inventions (product or process). An invention is eligible for patent protection if it provides a new way of doing something or a new technical solution to a problem. Patent protection is not automatic, rather it requires a patent application. In the application the inventor makes public the technical information behind the invention. The owner of a patent has the right to stop others from exploiting the patented invention while the patent is in effect.

Trademarks are used to inform the public of the source of services and products. A trademark holder has the right to stop others of using the trademark without permission. In the EU trademark registration is in effect for ten years and can be renewed as many times as needed.

There are also design patents that are used to protect visual designs of objects, geographical indications that are used to inform the public of the origin or food and agricultural products, and trade secrets and confidential information that protect information that has commercial value.

## **How is copyright obtained**

Copyright protection is automatic and takes effect at the moment of creation of the work. Some countries require that the work has been set in some fixed form in order to be seen as a copyrighted work. Furthermore, some countries offer the possibility of registration of the copyright, with which come some benefits.

Usually copyright is granted to a natural person who is the creator of the work. If there are multiple co-creators, they hold the copyright together. In some countries copyright may be granted to the employer of the original creator.

In Finland copyright is always granted to the natural person who is the creator. It may however be transferred to the person’s employer or other entity under the employment or other contract. Under Finnish copyright law the original creator in general still holds her moral rights after the transfer (section 3) and also, unless the parties have otherwise agreed, the transferee may not modify the work (section 28).

## **The public domain**

Generally speaking, the public domain is the pool of materials that are not under copyright and hence free for all to use and build upon. They are

* the type of materials that are not copyrightable (such as facts, or in some countries for example laws and decrees)
* works not original enough to gain protection
* works whose protection has expired
* works whose creator or other rightsholder has placed them in the public domain (for example by using the Creative Commons CC0 dedication).
* works whose copyright holder did not comply with required formalities to acquire or maintain the copyright (mainly applicable to older works as the Berne convention has helped to eliminate such formalities)

As copyright law is not identical around the world, a work in public domain in one country may still be under copyright in another country.

## **Exceptions and limitations to copyright**

Restricting all uses of copyrighted works without the permission of the rightsholder would be inappropriate as it could lead to effectively banning critique of works, unduly limit education etc. Therefore some uses of copyrighted works do not require permission. This is a concept know as exceptions and limitations to copyright. All countries have some exceptions and limitations, usually relating to criticism, parody, copies for the visually impaired etc.

These exceptions and limitations have been included in national copyright laws in two main ways, either by listing the specific permitted activities or by providing a more general guideline to be applied. The first approach provides legal certainty and the second flexibility. An example of the first approach can be found in Finnish copyright law, where for example the right to quote, make copies for private use and text and data mining have been listed as exceptions. An example of the second approach is the concept of fair use outlined in US copyright law (17 U.S.C. § 107). Fair use allows use of a copyrighted work for certain purposes if it is determined that the use is fair. The determination is done by evaluating four factors relating to the specific use case and the work itself. Ultimately, in a case of conflict, a court will decide if the user’s evaluation of the factors was correct.

In general, in countries that have joined the Berne Convention, the exceptions and limitation must be compatible with the “three-step” test. An exception or limitation is acceptable if it would be 1) limited to special cases 2) does not conflict with a normal exploitation of the work and 3) does not unreasonably prejudice the legitimate interests of the author. Many other treaties have adopted a similar test.

In some countries there are also compulsory licensing schemes that permit the use of copyrighted works for certain purposes for a non-negotiable fee.

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[Tekijänoikeuslaki](https://www.finlex.fi/fi/laki/ajantasa/1961/19610404#L1P3) (original text of the Finnish Copyright Act in Finnish)

[Unofficial translation of the Finnish Copyright Act](https://www.finlex.fi/en/laki/kaannokset/1961/en19610404.pdf)

[Berne Convention](https://www.wipo.int/wipolex/en/text/283693)

U.S. Copyright office: [17 U.S.C. § 107](https://www.copyright.gov/title17/92chap1.html#107)

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