Copyright and Related Rights
THE SYSTEM OF INTELLECTUAL PROPERTY

- Copyright and Related rights
- Industrial Property
- Unfair Competition
INTRODUCTION TO COPYRIGHT LAW
Copyright law

• Copyright law deals with the rights of intellectual creators
• Protects particular forms of creativity
• Protects only the form of expression of ideas, not the ideas themselves
  – creativity in the choice and arrangement of words, musical notes, colors, shapes ....
• Protects the owner of rights in artistic works against those who “copy”
• Copyright vis-à-vis authors’ right
Interest of the creators

COPYRIGHT LAW

Public interest
GOOD COPY BAD COPY - a documentary about the current state of copyright and culture
Copyright Law (1)

• The ancient world
  – Seneca: “We said that the books belong to Cicero. Dorus, the publisher, said that the books belong to him. The truth is on both sides. It is just to say that they (the books) belong to both of them, but in different way.”

• The Gutenberg era
  – Individual privileges to the publishers, issued by the highest state bodies, granting them the monopoly right to publish and sale the books for a limited period of time
  – Authors’ privileges – form of reward given by the state bodies
  – Territorial privileges – certain groups are ban to reprint books in a certain period of time

• The first laws
  – Statute of Anne (UK, 1709): exclusive right of the author to exploit its work via publishing for a period of 14 years, that could be prolong for additional 14 years if the prior elapsed during the life of the author
  – Copyright Law (Denmark, 1741): the reprint of a book has to be by a consent of the first publisher
Copyright Law (2)

- **Internationalisation**
  - Bilateral treaties providing for mutual recognition of rights, but they were not comprehensive enough or of a uniform pattern.
  - Berne Convention for the Protection of Literary and Artistic Works of 1886 (revised several times)
  - The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (“the Rome Convention”) of 1961
  - Special Conventions in the Field of Related Rights
  - WIPO Copyright Treaty (WCT) of 1996
  - WIPO Performances and Phonograms Treaty (WPPT) of 1996
  - Agreement on Trade-Related Aspects of Intellectual Property Rights

- **The EU Copyright Acquis**
Berne Convention (1)

• Basic principles

1. **National treatment** - works originating in one of the member States are to be given the same protection in each of the member States as these grant to works of their own nationals.

2. **Automatic protection** - the national treatment is not dependent on any formality i.e. protection is granted automatically and is not subject to the formality of registration, deposit or the like.

3. **Independence of protection** - enjoyment and exercise of the rights granted is independent of the existence of protection in the country of origin of the work.
• Works Protected
  – any original production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression;
  – Derivative works receive the same protection as original works
  – official texts of a legislative, administrative and legal nature, works of applied art (optional)
  – works of folklore
    • Possibility of making the protection of works or any specified categories thereof subject to their being fixed in some material form.
    • Collections of literary or artistic works which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.
    • Protection does not apply to news of the day or to miscellaneous facts having the character of mere items of press information.
• Owners of rights
  – the author and his successors in title; for some categories of works, however, such as cinematographic works - *a matter for legislation in the country where protection is claimed.*

• Persons Protected
  – authors - nationals or residents of a member country; alternatively, if, not being nationals or residents of a member country, they first publish their works in a member country or simultaneously in a non-member and a member country.
Berne Convention (4)

• Minimum standards of protection
  – Certain minimum standards of protection are prescribed relating to the rights of authors and the duration of protection.

• Rights Protected
  – *Exclusive economic rights*: right of translation; the right of reproduction in any manner or form, which includes any sound or visual recording; the right to perform dramatic, dramatico-musical and musical works; the right to broadcast and communicate to the public, by wire, rebroadcasting or loudspeaker or any other analogous instrument, the broadcast of the work (Article 11bis), the right of public recitation; the right to make adaptations, arrangements or other alterations; the right to make cinematographic adaptations and reproductions of a work.
  – *Moral rights*: the right of the author to claim authorship of his work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to his honor or reputation.
Berne Convention (5)

- Limitations
  - Free use and compulsory licenses
- Duration of the term of protection
  - Minimum during the life of the author and 50 years past death, as general rule; exceptions for certain types of work
The Rome Convention (1)

- Extends copyright protection from the author of a work to the creators and owners of particular, physical manifestations the work.
- The protection granted under the Rome Convention (hereinafter RC) leaves intact and in no way affects the protection of copyright in literary and artistic works.
- The performers, producers of phonograms and broadcasting organizations of a country enjoy international protection even when the literary and artistic works they used might be denied protection in that country because it was not party to at least one of the major international copyright conventions.
The Rome Convention (2)

- National Treatment - performers, producers of phonograms and broadcasting organizations to which the RC applies enjoy in Contracting States (CS) the same rights as those countries grant to their national.

- Eligibility for Protections:
  - performers, if the performance takes place in another CS (irrespective of the country to which the performer belongs) or if it is incorporated in a phonogram protected under the RC (irrespective of the country to which the performer belongs or where the performance actually took place) or if it is transmitted “live” (not from a phonogram) in a broadcast protected by the RC (irrespective again of the country to which the performer belongs);
  - producers of phonograms if the producer is a national of another CS (criterion of nationality) or the first fixation was made in another Contracting State (criterion of fixation) or the phonogram was first or simultaneously published in another CS (criterion of publication);
  - broadcasting organizations if their headquarters is situated in another CS (principle of nationality), or the broadcast was transmitted from a transmitter situated in another CS, irrespective of whether the initiating broadcasting organization was situated in a CS (principle of territoriality).
The Rome Convention (3)

- The Minimum Protection - “the possibility of preventing certain acts” done without the holders’ consent. The restricted acts comprise: broadcasting or communication to the public of a “live” performance; recording an unfixed performance; reproducing a fixation of the performance, provided that the original fixation was made without the consent of the performer or the reproduction is made for purposes not permitted by the Convention or the performer.
  - Producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms.
  - Broadcasting organizations have the right to authorize or prohibit: the simultaneous rebroadcasting of their broadcasts, the fixation of their broadcasts, the reproduction of unauthorized fixations of their broadcasts or reproduction of lawful fixations for illicit purposes and the communication to the public of their television broadcasts by means of receivers in places accessible to the public against payment (it does not extend to communication to the public of merely sound broadcasts, and that it is a matter for domestic legislation to determine the conditions under which such a right may be exercised. Also, it does not protect against distribution by cable of broadcasts).
The Rome Convention (4)

- Provisions for Discretionary Regulation of the Exercise of Rights - allowing national laws to regulate certain aspects of protection at their discretion.
  - protection of performers: the protection against rebroadcasting of the performance and fixation thereof for broadcasting purposes, where the broadcasting of the performance was consented to by the performer; if several performers participate in the same performance, the manner in which they should be represented in connection with the exercise of their rights.
  - both the protection of performers and producers of phonograms: if a phonogram published for commercial purposes is used directly for broadcasting or any communication to the public, an equitable remuneration shall be paid by the user to the performers, or to the producers of the phonogram, or to both.

- Limitations
  - Contracting State may provide for exceptions as regards private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, and for all kinds of use solely for the purpose of teaching or scientific research.
  - Contracting State may also provide for the same kind of limitations with regard to the protection of performers, producers of phonograms and broadcasting organizations as it provides for in connection with copyright protection. Compulsory licenses may be provided for only to the extent to which they are compatible with the Rome Convention.
  - In regard to the cinematographic industry’s interest in exclusively exploiting the contributions made to their productions, the Rome Convention provides that once a performer has consented to the incorporation of his performance in a visual or audiovisual fixation, he shall have no further rights under the Rome Convention as regards the performance concerned.
• **Duration of Protection**
  – minimum term of protection is period of 20 years, to be computed from the end of the year in which the fixation was made, as far as phonograms and performances incorporated therein are concerned, or the performance took place, as regards performances not incorporated in phonograms, or the broadcast took place, for broadcasts.

• **Restriction of Formalities**
  – If a country requires compliance with formalities as a condition of protecting related rights in relation to phonograms, these should be considered as fulfilled if all copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol ℗, accompanied by the year date of the first publication. If the copies of their containers do not identify the producer or his licensee, the notice shall also include the name of the owner of the rights of the producer, and if the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who owns the rights of such performers.
Special conventions (1)

• Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, concluded in Geneva in 1971 (Phonograms Convention)

• Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, concluded in Brussels in 1974 (Satellites Convention)
  – protect producers of phonograms and broadcasting organizations, respectively, against certain prejudicial acts that have been widely recognized as infringements or acts of piracy;
  – The Special Conventions supplement the Rome Convention to a certain extent, but their approach is different, in three main respects.
    • leave the Contracting States free to choose the legal means of preventing or repressing acts of piracy in that area.
    • do not speak of the system of “national treatment”.
    • open to all States members of the United Nations or any of the specialized organizations brought into relationship with the United Nations, or parties to the Statute of the International Court of Justice.
• **Substantive Provisions of the Phonograms Convention**
  - The Phonograms Convention requires only the criterion of nationality as a condition of granting protection.
  - Protection is granted not only against making duplicates of the phonogram, but also against the distribution of illicit duplicates and importation of such duplicates for distribution.
  - The means by which the Phonograms Convention is to be implemented are a matter for domestic legislation.
  - The Phonograms Convention permits the same limitations as those accepted in relation to the protection of authors. It also permits compulsory licenses if reproduction is intended exclusively for teaching or scientific research, limited to the territory of the State whose authorities give the license, and in return for equitable remuneration.
  - Regarding the term of protection, the same minimum duration is required by the Phonograms Convention as by the Rome Convention.
  - It contains a provision concerning performers that regulates that the national legislation of each Contracting State may lay down, where necessary, the scope of protection afforded to performers whose performance is fixed on a phonogram and the conditions of enjoying such protection.
Special conventions (4)

- **Substantive Provisions of the Satellites Convention**
  - The Satellites Convention enlarges the scope of the protection of broadcasting organizations.
  - The Satellites Convention does not protect the transmitted programs.
  - It permits the distribution of program-carrying signals by non-authorized persons, if those signals carry short excerpts containing reports of current events or, as quotations, short excerpts of the program carried by the emitted signals, or, in the case of developing countries, if the program carried by the emitted signals is distributed solely for the purposes of teaching, including adult teaching or scientific research.
  - With regard to the duration of the protection, the Satellites Convention refers to national legislation in this special context.
  - The Satellites Convention is not to be applied when the signals emitted by the originating organization are intended for direct reception from a satellite by the public. In such cases the signals emitted are not intended for any intervening distributor of derived signals; they are directly accessible to the public at large.
• Establishes a further guarantee for fullest possible respect of the Berne Convention, since it includes, by reference, all substantive provisions of it.

• Provisions Relating to the So-called “Digital Agenda”
  – the rights applicable to the storage and transmission of works in digital systems, the limitations on and exceptions to rights in a digital environment, technological measures of protection and rights management information.

• Subject Matter and Scope of Protection
  – *mutatis mutandis application of Articles 2 and 2bis of the Berne Convention.*
  – *The scope of the subject matter covered by copyright,* particularly in relation to computer programs and databases is explored in the WCT and there is some clarification on the matter in common with those in the TRIPS Agreement.
• Rights to be Protected
  – exclusive right to authorize the making available to the public of originals and copies of works through sale or other transfer of ownership, that is, an exclusive right of distribution
  – exclusive right of authorizing commercial rental to the public in respect of the same categories of works — computer programs, cinematographic works and works embodied in phonograms, as determined in the national laws of Contracting Parties

• Limitations and Exceptions
  – determines the types of limitations on, or exceptions to, the rights granted under the Treaty which may be applied including the criteria for the application of limitations of, or exceptions to, the rights under the Berne Convention (the three-step to determine the limitations and exceptions allowed).

• Enforcement of Rights
  – Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this WCT.
  – Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by WCT, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.
• Provisions Relating to the So-called “Digital Agenda”
  – Includes certain definitions (“fixation” and “communication to the public”), rights applicable to storage and transmission of performances and phonograms in digital systems, limitations on and exceptions to rights in a digital environment, technological measures of protection and rights management information.

• Criteria for Eligibility: application of the criteria under the Rome Convention (Articles 4, 5, 17 and 18).

• National Treatment: national treatment only extends to the rights granted under the Treaty (the same kind of national treatment as that prescribed by Article 3.1 of the TRIPS Agreement in respect of related rights.)

• Coverage of the Rights of Performers: it only extends to live aural performances and performances fixed in phonograms, except for the right of broadcasting and communication to the public of live performances
WIPO Performances and Phonograms Treaty (2)

- **Moral Rights of Performers:** the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

- **Economic Rights of Performers:** right of making available; right of distribution; right of broadcasting and communication to the public of unfixed performances; right of reproduction and right of rental;

- **Rights of Producers of Phonograms:** right of reproduction and right of rental;

- **Right to Remuneration for Broadcasting and Communication to the Public:** the same kind of right of remuneration to performers and producers of phonograms as Article 12 of the Rome Convention;
• Limitations and Exceptions: the Contracting Parties may provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works;

• Transferability of Rights: there are no any limitation on the transferability of economic rights.

• Duration of Protection
  – the term of protection to be granted to 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.”
  – The term of protection to be granted to producers of phonograms shall last, at least, until the end of a period of 50 years computed from the end of the year in which 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.

• Formalities: the enjoyment and exercise of rights provided for in the Treaty must not be subject to any formality.

• Enforcement of Rights: correspond to the similar provisions in Article 14 of the WCT
TRIPS (1)

- Minimum harmonization (Art. 1(1))
- National treatment (Art. 1(3) and Art. 3) and most favored nation treatment (Art. 4)
- Non-derogation of international conventions (Art. 2)
TRIPS (2)

- Objectives (Art. 7): The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

- Enforcement procedures and remedies (Art. 41-61)

- Acquisition and maintenance of intellectual property rights and related inter-partes procedures (Art. 62)

- Dispute Prevention and Settlement (Art. 63-64)
• Members are obliged to comply with the substantive provisions of the Paris Act of 1971 of the Berne Convention (Articles 1 – 21 of the Berne Convention and the Appendix thereto) except those rights (moral rights) conferred under the Article 6bis of the Berne Conventions (Art. 9.1).

• Copyright protection extends to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such (Art. 9.2).

• Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (Art. 10.1).

• Databases and other compilations of data or other material shall be protected as such under copyright even where the databases include data that as such are not protected under copyright. (Art. 10.2).
• Authors shall have in respect of at least computer programs and, in certain circumstances, of cinematographic works the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works (Art. 11).

• The term of protection shall be, in general, the life of the author and 50 years after his death; shorter terms in certain cases are allowed (Art. 12).

• Members have to confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder (Art. 13).
TRIPS on Related Rights (1)

• performers shall have the possibility of preventing the unauthorized fixation of their performance on a phonogram (Art. 14.1)

• Members have to grant producers of phonograms an exclusive reproduction right (Art. 14.2)

• Broadcasting organizations shall have the right to prohibit the unauthorized fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of their television broadcasts (Art. 14.3)
• Members have to grant an exclusive rental right at least to producers of phonograms (Art. 14.4).

• The term of protection is at least 50 years for performers and producers of phonograms, and 20 years for broadcasting organizations (Art. 14.5).

• Member may, in relation to the protection of performers, producers of phonograms and broadcasting organizations, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention (Art. 14.6).
EU COPYRIGHT LAW
EU recognises that

- The creative and artistic work of authors and performers necessitates an adequate income as a basis for further creative and artistic work, and the investments required particularly for the production of phonograms and films are especially high and risky. The possibility of securing that income and recouping that investment can be effectively guaranteed only through adequate legal protection of the rightholders concerned.

- These creative, artistic and entrepreneurial activities are, to a large extent, activities of self-employed persons. The pursuit of such activities should be made easier by providing a harmonised legal protection within the Community. To the extent that these activities principally constitute services, their provision should equally be facilitated by a harmonised legal framework in the Community.

- The level of protection of copyright and related rights should be high, since those rights are fundamental to intellectual creation. Their protection ensures the maintenance and development of creativity in the interest of authors, cultural industries, consumers and society as a whole.
Why EU recognises this

• The legal protection afforded by the relevant rights i.e. copyright and related rights allows for the development of a copyright industry: (1) core copyright industries that are based upon the creation, distribution, and sale of copyright products and services (for example, magazines, motion pictures, recorded music, software), and (2) copyright-dependent industries that would not exist without the existence of products and services subject to copyright (for example, television set manufacturers, DVD player manufacturers, computer manufacturers).

• As for illustration the Copyright industry in 2000:
  – contributed more than €1.2 trillion (€1,200 billion) to the economy of the European Union
  – produced value added of €450 billion (5.3% of the total for the 15 EU Member States)
  – employed 5.2 million persons (3.1% of total EU employment)
TOTAL TURNOVER AND GROSS VALUE ADDED BY EU COPYRIGHT INDUSTRIES, BILLION €, 2000

The Contribution of Copyright and Related Rights to the European Economy, Based on Data from the Year 2000; Final Report, 20 October 2003; Media Group, Business Research and Development Centre; Turku School of Economics and Business Administration, Finland; Prepared for European Commission, Directorate General – Internal Market;

- [http://ec.europa.eu/internal_market/copyright/docs/studies/etd2002b53001e34_en.pdf](http://ec.europa.eu/internal_market/copyright/docs/studies/etd2002b53001e34_en.pdf)
• The Contribution of Copyright and Related Rights to the European Economy, Based on Data from the Year 2000; Final Report, 20 October 2003; Media Group, Business Research and Development Centre; Turku School of Economics and Business Administration, Finland; Prepared for European Commission, Directorate General – Internal Market;
• http://ec.europa.eu/internal_market/copyright/docs/studies/etd2002b53001e34_en.pdf
GROSS VALUE ADDED BY EU COPYRIGHT INDUSTRY SECTORS AS PERCENT OF TOTAL GDP, 2000

- The Contribution of Copyright and Related Rights to the European Economy, Based on Data from the Year 2000; Final Report, 20 October 2003; Media Group, Business Research and Development Centre; Turku School of Economics and Business Administration, Finland; Prepared for European Commission, Directorate General – Internal Market;
• Treaty on the Functioning of the European Union (Article 118):
  (1) In the context of the establishment and functioning of the internal market, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall establish measures for the creation of European intellectual property rights to provide uniform protection of intellectual property rights throughout the Union and for the setting up of centralised Union-wide authorisation, coordination and supervision arrangements.

  (2) The Council, acting in accordance with a special legislative procedure, shall by means of regulations establish language arrangements for the European intellectual property rights. The Council shall act unanimously after consulting the European Parliament.
EU Copyright Law

• Copyright Acquis
EU Copyright Law

- Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (Broadcasting Directive)

The Directive requires all Member States to apply effective, dissuasive and proportionate remedies and penalties against those engaged in counterfeiting and piracy and so creates a level playing field for right holders in the EU.

It means that all Member States will have a similar set of measures, procedures and remedies available for rightholders to defend their intellectual property rights (be they copyright or related rights, trademarks, patents, designs, etc) if they are infringed.
The objective of the Directive on the resale right for the benefit of the author of an original work of art (2001/84/CE) is to provide creators with an adequate and standard level of protection and eliminate the distortion in the conditions for competition currently existing within the single market for contemporary art.

The Directive will give artists the benefit of this right, regardless of where in the Union their works are sold. In addition, it will give the Commission a basis on which to promote the international recognition of resale rights.
The objectives of the Directive on the harmonisation of certain aspects of copyright and related rights in the information society (2001/29/EC) are to adapt legislation on copyright and related rights to reflect technological developments and to transpose into Community law the main international obligations arising from the two treaties on copyright and related rights adopted within the framework of the World Intellectual Property Organisation (WIPO) in December 1996. It is an essential building block for the Information Society.

The final text is a result of over three years of thorough discussion and an example of co-decision making where the European Parliament, the Council and the Commission have all had a decisive input.
Directive 96/9/EC on the legal protection of databases

- The Directive on the legal protection of Databases was adopted in February 1996.
- The Directive created a new exclusive 'sui generis' right for database producers, valid for 15 years, to protect their investment of time, money and effort, irrespective of whether the database is in itself innovative ("non-original" databases).
- The Directive harmonised also copyright law applicable to the structure and arrangement of the contents of databases ("original" databases).
- The Directive's provisions apply to both analogue and digital databases.
In 1993 the Council adopted the Directive 93/98/EEC that harmonises the terms of protection of copyright and neighbouring rights.

The Directive establishes a total harmonisation of the period of protection for each type of work and each related right in the Member States – e.g. 70 years after the death of the author for works and 50 years after the event setting the time running for neighbouring rights. Furthermore, it deals with other issues, such as the protection of previously unpublished works, of critical and scientific publications and of photographic works.

Directive 93/98/EEC has been repealed and replaced by Directive 2006/116/EC, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives, and their application.
Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

- Directive 93/83/EEC aims at facilitating the cross border transmission of audiovisual programmes such as, particularly broadcasting via satellite and retransmission by cable.

- In view of that objective, mechanisms are set up in order to ensure that creators and producers of programmes obtain a fair remuneration, on grounds of intellectual property rights, for the use of their creations.
Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property

- In 1992 the Council adopted Directive 92/100/EEC that harmonises the provisions relating to rental and lending rights as well as on certain rights related to copyright.
- It provides for exclusive rights to authorise or prohibit the rental and lending of both works subject to copyright and other objects subject to neighbouring rights.
- It provides for a harmonisation of certain neighbouring rights including the right of fixation, reproduction, broadcasting and communication to the public and distribution.
- The Directive addresses collective management as a model for the management of the equitable remuneration right, but does not make collective management a requirement.
- Directive 92/100/EEC has been repealed and replaced by Directive 2006/115/EC, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives.

• The Directive on the legal protection of computer programs (91/250/EEC) was a real European 'first' for copyright law, the first copyright measure to be adopted following the publication of the White Paper on completing the Single Market by 1992.

• The objective of the Directive is to harmonize Member States' legislation regarding the protection of computer programmes in order to create a legal environment which will afford a degree of security against unauthorized reproduction of such programmes.
SUBJECT MATTER IN COPYRIGHT PROTECTION
Subject Matter

- Every production in the literary, scientific and artistic domain, whatever the mode or form of expression
  - *Literary works*: any writings, irrespective of their length, purpose, form; whether published or unpublished; including in some countries “oral works” (works not reduced to writing);
  - *musical works*: expressions of feelings through sounds – tones (melody, rhythm, harmony)
  - *artistic works*: whether two-dimensional or three-dimensional, irrespective of content and destination;
  - *maps and technical drawings*;
  - *photographic works*: irrespective of the subject matter and the purpose for which they are made;
  - *motion pictures (“cinematographic works”)*: whether silent or with a soundtrack, and irrespective of their purpose, their genre, length, method employed or technical process used;
  - *computer programs* (either as a literary work or independently);
  - *scientific works*: works concerning the science, fundamental or applied;
  - *Etc, etc, etc ....*
Elements of the copyright works

**Idea (animus)**
- It is the conception of the ‘future’ copyright work that has to be expressed in certain outer form
- It stays into the area of the ‘intellectual’ so it is not protectable

**Form (corpus)**
- *Inner form* - concretisation of the content of the ‘future’ work that depends on the type of the copyright work
- *Outer form* – Materialised form of the copyright work. It is the final form of the intellectual work
- *The form of the copyright work enjoys the protection*
CRITERIA FOR PROTECTION
• Any **original** production in the literary, scientific and artistic domain, **whatever may be the mode or form of its expression** (Art. 2 (1), Berne Convention)

• It shall, however, be a **matter for legislation** in the countries of the Union to prescribe that works in general or any specified categories of works **shall not be protected unless they have been fixed in some material form** (Art. 2 (2), Berne Convention).

• The enjoyment and the exercise of these rights **shall not be subject to any formality**; such enjoyment and such exercise shall be independent of the existence of protection in the country of origin of the work. Consequently, apart from the provisions of this Convention, the extent of protection, as well as the means of redress afforded to the author to protect his rights, shall be governed exclusively by the laws of the country where protection is claimed (Art. 5 (2), Berne Convention).
Originality

• No exact definition of originality in the legislation

• By the theory
  – Personal (Authors’) originality: individual conception and fundamental intellectual creation of the author in relation to the content of the copyright work
  – Work Related originality:
    • Fundamental originality (absolute originality): creation of copyright work that as new is independent of the existence of any other copyright work;
    • Derivative originality (relative originality): creation of copyright work that as new has certain elements - depends on other copyright work
Originality

- British Law: the originality that is required is related to the expression of thought; the work is not copied and derives from the author
- Authors’ Law and EU Law: author's own intellectual creation; original in the sense that it is the author's own intellectual creation
- The originality vis-à-vis the artistic value
  - No tests as for the quality, aesthetics of the work
  - What is art?
Fixation to material form

- Alternative option by Berne Convention
- Many countries do not require that a work be produced in a particular form to obtain copyright protection (for example, Spain, France)
- USA, UK and Canada: work be “fixed in a tangible medium of expression”; fixation be stable and permanent enough; some material form, capable of identification and having a more or less permanent endurance.
- TRIPS requires all members of the WTO to protect live musical performances. This means that even countries with fixation requirements must enact statutes to ensure the protection of musical performances without fixation. This provision is limited to “musical” performances and does not apply to other types of performances.
Non-formality

- Formalities from substantive or procedural aspect are not perquisite of the copyright protection. The copyright protection sets off in the moment of the creation of the work.

- The UK and US systems: deposing and registration of the copyright work as condition for protection. The author is obliged to deposit copies of the work/to register the work in certain period of time. If there is no such, the author will not be entitled to bring a action for copyright infringement if there is such.

Marking of the work: ©, __name of the author/rights’ holder__, __year of first publication__
• Authors
• Authorship in works created by multiple persons
• Holders of rights in works of employees and works for hire
Author and Co-authors

- **Author:** the (natural) person who created the work and owns the rights conferred by copyright; the person whose name appears on the work, even if the name is a pseudonym, where the pseudonym leaves no doubts on the identity of the author.

- **Co-authors:** the (natural) persons that created the work by joint work. The co-authors jointly own the rights conferred by copyright, in accordance with their individual share (contribution) or an agreement between them.
Authorship in works created by multiple persons

- Theatrical (Dramatic) works (ballet, opera, plays, musicals, pantomimes ....)
  - Choreographer, composer, script/ librretto writer, director, set designer, costume designer...

- Cinematographic or Audiovisual works (motion pictures, TV works)
  - the principal director as well as script writer and director of photography, and in some cases the composer of the original music for the film; when animation included the head animator;
Works of employees and works made for hire

• Authors => rights’ holders
  – In principle, rights vested in authors, but transferred (by law or contract) to the employer/hirer
  – Limitations of types of rights and duration of transfer, except of the computer programs
NATURE OF COPYRIGHT
Copyright (authors’ right)

Set of authorisations

MORAL RIGHTS
- (not) to disclose
- Attribution
- Name/pseudonym/anonymously
- Respect of the integrity of the author

ECONOMIC (EXCLUSIVE) RIGHTS
- Reproduction
- Distribution
- Lending and rental
- Communication to the public

OTHER RIGHTS
- Access to the original
- Resale right to the benefit of the author
Moral rights

• Independent of the usual economic rights
• Remain with the author even after he has transferred his economic rights

• Berne Convention, Article 6bis, Moral Rights:
  – (1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.
  – (2) The rights granted to the author in accordance with the preceding paragraph shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the country where protection is claimed. However, those countries whose legislation, at the moment of their ratification of or accession to this Act, does not provide for the protection after the death of the author of all the rights set out in the preceding paragraph may provide that some of these rights may, after his death, cease to be maintained.
  – (3) The means of redress for safeguarding the rights granted by this Article shall be governed by the legislation of the country where protection is claimed.
Economic rights

- Right to use the work
  - Monopolistic and absolute right
  - Includes the rights to transfer/assign the work
- Right to exploit the work
  - Proprietary right and absolute right
  - Limited in time and transferable
- Right to remuneration
  - Exclusive and monopolistic right
  - The authors cannot renounce the right to remuneration (eventual clauses in contract are null and void)
- Right to prohibit others to exploit the work
  - Exploitation possible only by consent/agreement of the author
  - Prohibition by means of enforcement
Economic rights (1)

• Reproduction
  – Making a copy of the copyright work
    • In any manner or form of reproduction, including use and storage in digital form;
    • By direct and indirect reproduction;
    • In whole or part.
Economic rights (2)

- Distribution
  - Putting into circulation or offering to the public for sale or other form of transfer of the ownership, including by lease or rental, as well as import, of the original or copy of the copyright work
Economic rights (3)

- Rental and lending rights
  - ‘rental’ - making available for use, for a limited period of time and for direct or indirect economic or commercial advantage;
  - ‘lending’ means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public;

- Regulated by Directive 2006/115/EC on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which covers copyrights and related rights
Economic Rights (3) - Lending and Rental Rights (1)

- Rightholders and subject matter of rental and lending right (in relation to copyrights) (Art. 3)
  - The exclusive right to authorise or prohibit rental and lending belong to the author in respect of the original and copies of his work;
  - It does not cover rental and lending rights in relation to buildings and to works of applied art;
  - The rights may be transferred, assigned or subject to the granting of contractual licences;
  - Member States may provide for a similar presumption that when a contract is concluded, the author covered by this contract, subject to contractual clauses to the contrary, to have transferred his rental right.

- Relation between copyright and related rights
  - The protection of copyright is left intact and in no way affected by the protection of copyright-related rights under this Directive.
Economic rights (4)

• Communication to the public
  – Use of original or copy of copyright work in immaterial form that provides access to the works by the public.
Other rights - Resale Right

- Resale right: Right to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
  - Applies to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.
  - It is an unassignable and inalienable right, enjoyed by the author of an original work of graphic or plastic art, to an economic interest in successive sales of the work concerned.
  - It is a right of a productive character which enables the author/artist to receive consideration for successive transfers of the work.
  - It is intended to ensure that authors of graphic and plastic works of art share in the economic success of their original works of art. It helps to redress the balance between the economic situation of authors of graphic and plastic works of art and that of other creators who benefit from successive exploitations of their works.

- Regulated in detail by Directive 2001/84/EC on the resale right for the benefit of the author of an original work of art.
<table>
<thead>
<tr>
<th>Related rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Performers’ rights</td>
</tr>
<tr>
<td>Producers’ rights</td>
</tr>
<tr>
<td>Phonogram producers</td>
</tr>
<tr>
<td>Film producers</td>
</tr>
<tr>
<td>Stage producers</td>
</tr>
<tr>
<td>Broadcasters’ rights</td>
</tr>
<tr>
<td>Publishers’ rights</td>
</tr>
<tr>
<td>Database makers’ rights</td>
</tr>
</tbody>
</table>
Performers’ rights (1)

• Performers’ Moral Rights
  – right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance
  – to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.
Performers’ rights (2)

- Performers’ Economic Rights
  - Exclusive right to allow or to forbid use of their performance for:
    - Broadcasting, unless the performance is of such nature
    - Recording
    - Distribution
    - Rental
    - Making available to the public
Performers’ rights (2 - duplicate)

• Performers’ Economic Rights
  – Exclusive right to allow or to forbid use of their performance for:
  • Broadcasting, unless the performance is of such nature
  • Recording
  • Distribution
  • Communication to the public
  • Rental
  • Making available to the public
Producers’ Rights

• Economic Rights of phonogram producers
  – To authorise or forbid use of the phonograms for
    • Reproduction
    • Communication to the public
    • Distribution
    • Rental
    • Making available to the public
Producers’ Rights (duplicate)

- Economic Rights of phonogram producers
  - To authorise or forbid use of the phonograms for
    - Reproduction
    - Communication to the public
    - Distribution
    - Rental
    - Making available to the public
Broadcasters’ Rights

• Economic Rights of Broadcasters
  – Reproduction
  – Communication to the public
  – Fixation
Databases Makers’ Rights

- Right for the maker of a database which shows that there has been qualitatively and/or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents
  - to prevent extraction and/or re-utilization of the whole or of a substantial part, evaluated qualitatively and/or quantitatively, of the contents of that database.

- 'extraction' means the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form;
- 're-utilization' means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission. The first sale of a copy of a database within the Community by the rightholder or with his consent shall exhaust the right to control resale of that copy within the Community;
- Public lending is not an act of extraction or re-utilization.
Publishers’ rights

• Protection of previously unpublished works
  – Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.
DURATION OF RIGHTS
Reasons for the regulation of the term of protection

• The minimum term of protection laid down by the Berne Convention was intended to provide protection for the author and the first two generations of his descendants. The average lifespan in the Community has grown longer, to the point where this term is no longer sufficient to cover two generations.

• Certain Member States have granted a term longer than 50 years after the death of the author in order to offset the effects of the world wars on the exploitation of authors' works. For the protection of related rights certain Member States have introduced a term of 50 years after lawful publication or lawful communication to the public.

• In order to establish a high level of protection which at the same time meets the requirements of the internal market and the need to establish a legal environment conducive to the harmonious development of literary and artistic creation in the Community.
Term of protection (1)

• Duration of the rights of an author of a literary or artistic work
  – The term lasts for the life of the author and for 70 years after his death
  – Specific rules in the case of the anonymous or pseudonymous works, collective works and where a legal person is designated as the rightholder, and where a work is published in volumes, parts, instalments, issues or episodes; works for which the term of protection is not calculated from the death of the author(s).

• Duration of the rights of an author of a cinematographic or audiovisual works
  – the term of protection expires 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.
Term of protection (2)

- Duration of related rights
  - The rights of performers expire 50 years after the date of the performance/ the date of the first lawful publication or the first lawful communication to the public, whichever is the earlier.
  - The rights of producers of phonograms shall expire 50 years after the fixation is made/the date of the first lawful publication or the first lawful communication to the public (if publication is not made).
  - The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made/the date of the first lawful publication or the first such communication to the public, whichever is the earlier.
  - The rights of broadcasting organisations shall expire 50 years after the first transmission of a broadcast.
Term of protection (3)

- Protection of previously unpublished works
  - the term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.

- Critical and scientific publications
  - The maximum term of protection of critical and scientific publications of works which have come into the public domains is 30 years from the time when the publication was first lawfully published.

- Protection of photographs
  - Photographs which are original are protected for the duration of the life of the author and 70 years after the death.
Term of protection (4)

  - The proposal aims to improve the social situation of performers, and in particular sessions musicians, taking into account that performers are increasingly outliving the existing 50 year period of protection for their performances.
## Duration of protection in EU Member States

<table>
<thead>
<tr>
<th>Country</th>
<th>Protection Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Belgium</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Cyprus</td>
<td>50 years after death (EU, WCT)</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>70 years after death (70 years after publication for anonymous works)</td>
</tr>
<tr>
<td>Denmark</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Estonia</td>
<td>50 years after death (EU)</td>
</tr>
<tr>
<td>Finland</td>
<td>70 years after death</td>
</tr>
<tr>
<td>France</td>
<td>70 years after death + 14 years and 272 days for the two World Wars [+ 30 years if the author died on active service]</td>
</tr>
<tr>
<td>Germany</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Greece</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Hungary</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Ireland</td>
<td>70 years after death</td>
</tr>
</tbody>
</table>
## Duration of protection in EU Member States

<table>
<thead>
<tr>
<th>Country</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Italy</td>
<td>70 years after death[50 years after death]</td>
</tr>
<tr>
<td>Latvia</td>
<td>70 years after death[50 years after death]</td>
</tr>
<tr>
<td>Lithuania</td>
<td>70 years after death[50 years after death]</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>70 years after death[50 years after death]</td>
</tr>
<tr>
<td>Malta</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Netherlands</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Poland</td>
<td>50 years after death (EU)</td>
</tr>
<tr>
<td>Portugal</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Romania</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Slovakia</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Slovenia</td>
<td>70 years after death</td>
</tr>
<tr>
<td>Spain</td>
<td>70 years after death [80 years after death(1879 - 1987); 60 years after death (1987 - 1994)]</td>
</tr>
<tr>
<td>Sweden</td>
<td>70 years after death</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>70 years after death</td>
</tr>
</tbody>
</table>
EXPLOITATION AND USE OF COPYRIGHT
Transfer of copyright

- InfoSoc. Directive, Recitals (30): The rights referred to in this Directive may be transferred, assigned or subject to the granting of contractual licences, without prejudice to the relevant national legislation on copyright and related rights.
- Databases Directive, Article 7/3: The right referred to in paragraph 1 may be transferred, assigned or granted under contractual licence.
- Rental and Lending Directive, Article 3/3: The rights referred to in paragraph 1 may be transferred, assigned or subject to the granting of contractual licences.
- Rental and Lending Directive, Article 9/4: The distribution right may be transferred, assigned or subject to the granting of contractual licences.
- Resale Directive, Recitals (1): In the field of copyright, the resale right is an unassignable and inalienable right, enjoyed by the author of an original work of graphic or plastic art, to an economic interest in successive sales of the work concerned.
• An assignment occurs when a copyright holder permanently transfers some or all of his exclusive rights to another party.

• Moral rights are non-transferable.

• There are no specific EC rules on the assignment of copyrights – national rules apply.
Copyright licencing

• Copyright holders commonly use licenses to authorize other people to engage in the activities covered by exclusive rights with respect to the copyrighted work. A typical license will specify the following:
  – the authorized use (e.g., reproduction, the preparation of derivative works, public performances);
  – the duration of the authorization (e.g. one year);
  – the nature of the authorization (e.g. exclusive or non-exclusive);
  – the fee related to the transaction (e.g. a flat fee or a fee proportional to the number of copies or of uses);
  – the format or media type (e.g. print only or also digital; text only or also in another media, such as a recording or a film);
  – the audience and location (e.g. a particular country, the premises of the library, the classroom, a distance learning course).

• Licences in Digital Environment
  – unilateral or shrinkwrap license - it comes with prescribed terms and is rarely subject to modification; they are most often used by licensors of software.
  – End-user license agreement (EULA) or browsewrap license - frequently used by the licensors of online content; allows prospective licensees to read the terms of the license on the licensor’s website and decide whether to accept them
Technological measures of Protection

- InfoSoc Directive, Art. 6(3)
  - ‘technological measures’ means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subjectmatter, which are not authorised by the rightholder of any copyright or any right related to copyright as provided for by law or the *sui generis right provided for in Chapter III of Directive 96/9/EC.*
  - Technological measures shall be deemed ‘effective’ where the use of a protected work or other subjectmatter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective.
Obligations of Member States as to technological measures

- To provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective. (Art. 6(1))

- To provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:
  - (a) are promoted, advertised or marketed for the purpose of circumvention of, or
  - (b) have only a limited commercially significant purpose or use other than to circumvent, or
  - (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures. (Art. 6(2))
Collecting Societies

• Collecting society is a body that collects royalty payments from various individuals and groups for copyright/related right holders.

• Collecting societies typically manage the remuneration right of the authors or related rights’ holders (In cases where the rights cannot be enforced to individual members of the public or where individual management would not be appropriate, given the number and type of uses involved, right holders are granted a remuneration right).

• Collecting societies usually require their members to transfer them exclusive administration rights of all of their works.

• Societies tasks
  – sell non-exclusive licenses;
  – collect royalties;
  – distribute collected royalties;
  – enter into reciprocal arrangements with other collecting societies;
  – enforce the rights of holders;
  – negotiate license fees for public performance and reproduction;
  – act as lobbying interests groups.
EXCEPTIONS AND LIMITATIONS
Rationale for Exceptions and Limitations

- Restrictions to the monopoly of the author over the work in the duration of the term of protection
- Balancing the need of the public vis-à-vis the rights of the holder;
- Differences in the national legal systems
- Minimum harmonisation by the InfoSoc Directive
  - This Directive should seek to promote learning and culture by protecting works and other subject-matter while permitting exceptions or limitations in the public interest for the purpose of education and teaching.
  - A fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject-matter must be safeguarded.
  - An exhaustive enumeration of exceptions and limitations to the reproduction right and the right of communication to the public. This list takes due account of the different legal traditions in Member States, while, at the same time, aiming to ensure a functioning internal market.
Exemption from the Reproduction Right

- By Art. 5(1): Temporary acts of reproduction, which are transient or incidental [and] an integral and essential part of a technological process and whose sole purpose is to enable:
  
  (a) a transmission in a network between third parties by an intermediary, or
  
  (b) a lawful use of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right.
Exceptions or limitations that may be provided by the Member States (Art. 5(2)):

- (a) in respect of reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders receive fair compensation;

- (b) in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures to the work or subject matter concerned;
– (c) in respect of specific acts of reproduction made by publicly accessible libraries, educational establishments or museums, or by archives, which are not for direct or indirect economic or commercial advantage;

– (d) in respect of ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts; the preservation of these recordings in official archives may, on the grounds of their exceptional documentary character, be permitted;

– (e) in respect of reproductions of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation.
Exceptions and limitations to the reproduction right and the right of communication to the public of works and right of making available to the public other subject-matter that may be provided by the member states

• Exceptions and limitations that may be provided by the member states (Art. 5(3)):
  – (a) use for the sole purpose of illustration for teaching or scientific research, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;
  – (b) uses, for the benefit of people with a disability, which are directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;
Exceptions and limitations to the reproduction right and the right of communication to the public of works and right of making available to the public other subject-matter that may be provided by the member states

- (c) reproduction by the press, communication to the public or making available of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informatory purpose and as long as the source, including the author's name, is indicated, unless this turns out to be impossible;

- (d) quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, that, unless this turns out to be impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purpose;

- (e) use for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;
Exceptions and limitations to the reproduction right and the right of communication to the public of works and right of making available to the public other subject-matter that may be provided by the member states

- (f) use of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by the **informatory purpose** and provided that the source, including the author's name, is indicated, except where this turns out to be impossible;
- (g) use during **religious celebrations or official celebrations** organised by a public authority;
- (h) use of **works**, such as works of architecture or sculpture, **made to be located permanently in public places**;
- (i) **incidental inclusion** of a work or other subject-matter in other material;
- (j) use for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;
- (k) use for the purpose of caricature, parody or pastiche;
Exceptions and limitations to the reproduction right and the right of communication to the public of works and right of making available to the public other subject-matter that may be provided by the member states

- (l) use in connection with the demonstration or repair of equipment;
- (m) use of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;
- (n) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph 2(c) of works and other subject-matter not subject to purchase or licensing terms which are contained in their collections;
- (o) use in certain other cases of minor importance where exceptions or limitations already exist under national law, provided that they only concern analogue uses and do not affect the free circulation of goods and services within the Community, without prejudice to the other exceptions and limitations contained in this Article.
Exceptions and limitations to the right of reproduction

- Where the Member States may provide for an exception or limitation to the right of reproduction pursuant, they may provide similarly for an exception or limitation to the right of distribution to the extent justified by the purpose of the authorised act of reproduction.
### Application of the exceptions and limitations

- The exceptions and limitations shall only be applied in certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.
Infringement of copyright
What is copyright infringement

• Copyright infringement (or copyright violation) is the unauthorized or prohibited use of copyright works, in a way that violates one or more of the copyright owner's exclusive rights.

• For electronic and audio-visual media, unauthorized reproduction and distribution is also commonly referred to as piracy.
Applicable rules

- **Databease Dir., Article 12, Remedies:** Member States shall provide appropriate remedies in respect of infringements of the rights provided for in this Directive.

- **Info Soc. Dir., Article 8, Sanctions and remedies:**
  - 1. Member States shall provide appropriate sanctions and remedies in respect of infringements of the rights and obligations set out in this Directive and shall take all the measures necessary to ensure that those sanctions and remedies are applied. The sanctions thus provided for shall be effective, proportionate and dissuasive.
  - 2. Each Member State shall take the measures necessary to ensure that rightholders whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and/or apply for an injunction and, where appropriate, for the seizure of infringing material as well as of devices, products or components referred to in Article 6(2).
  - 3. Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.
Applicable rules

- **Computer Programmes Dir., Article 7, Special measures of protection:**
  - 1. Without prejudice to the provisions of Articles 4, 5 and 6, Member States shall provide, in accordance with their national legislation, appropriate remedies against a person committing any of the acts listed in subparagraphs (a), (b) and (c) below:
    - (a) any act of putting into circulation a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
    - (b) the possession, for commercial purposes, of a copy of a computer program knowing, or having reason to believe, that it is an infringing copy;
    - (c) any act of putting into circulation, or the possession for commercial purposes of, any means the sole intended purpose of which is to facilitate the unauthorized removal or circumvention of any technical device which may have been applied to protect a computer program.
  - 2. Any infringing copy of a computer program shall be liable to seizure in accordance with the legislation of the Member State concerned.
  - 3. Member States may provide for the seizure of any means referred to in paragraph 1 (c).
Impact of the Copyright Infringement
<table>
<thead>
<tr>
<th>Country</th>
<th>Piracy rates</th>
<th>Commercial Value of Unlicensed Software ($M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>EU</td>
<td>35%</td>
<td>35%</td>
</tr>
<tr>
<td>Albania</td>
<td>75%</td>
<td>77%</td>
</tr>
<tr>
<td>Bosnia</td>
<td>66%</td>
<td>67%</td>
</tr>
<tr>
<td>Croatia</td>
<td>54%</td>
<td>54%</td>
</tr>
<tr>
<td>Macedonia</td>
<td>67%</td>
<td>68%</td>
</tr>
<tr>
<td>Montenegro</td>
<td>81%</td>
<td>83%</td>
</tr>
<tr>
<td>Serbia</td>
<td>74%</td>
<td>74%</td>
</tr>
</tbody>
</table>

Source: Seventh Annual BSA/IDC Global Software Piracy Study, May 2010;  
• Economic Benefits of Lowering Software Piracy
  – Across the 42 countries studied, a 10-point drop in PC software piracy (2 ½% a year) over the next four years would create
    • 600,000 new jobs
    • $141 billion in new revenues
    • $24 billion in new tax revenues

In 2008 the European Union’s creative industries most impacted by piracy (film, TV series, recorded music and software) experienced retail revenue losses of €10 billion and losses of more than 185,000 jobs due to piracy, largely digital piracy.

Based on current projections and assuming no significant policy changes, the European Union’s creative industries could expect to see cumulative retail revenue losses of as much as €240 billion by 2015, resulting in 1.2 million jobs lost by 2015.

TERA Consulting for ICC: Building a Digital Economy: The Importance of Saving Jobs in the EU’s Creative Industries
http://www.iccwbo.org/uploadedFiles/BASCAP/Pages/Building%20a%20Digital%20Economy%20-%20TERA(1).pdf