

Copyright

Copyright is a set of rights given to creators for protecting the expression of their literary and artistic works. In many jurisdictions copyright also provides protection for software code. With substantial innovation potential in the software sector and new opportunities for innovations based on copyright-protected materials, copyright is also relevant when it comes to innovation. Originality is a requirement for obtaining copyright protection. Like other types of IP they are national titles. Copyrights do not need to be registered.

What is a copyright?

Copyright is a set of rights given to creators for protecting the expression of their literary and artistic works. The types of works that can be protected by copyright include books, pamphlets, dramatic and choreographic works, musical compositions, cinematographic works, drawings and photographic works. However, copyright protection shall only extend to expressions of such works and not to ideas, procedures, methods of operation or mathematical concepts as such (TRIPS, Article 9(2), WTO 1994).

Software can also receive copyright protection in most countries. Thus software companies generally use copyright protection to prevent unauthorized copying of their products. Article 4 of the WIPO Copyright Treaty (WIPO, 1994) confirms that computer programs are protected as literary works within the meaning of Article 2 of the Berne Convention (Berne Convention 1886).

Some jurisdictions have required formalities to establishing copyright, but most recognize copyrights for any completed work, without formal registration. Thus, **copyright protection usually exists independently of any such registration, prior examination, or other formalities**. Instead, copyright protection attaches to the stated subject matter when an original work of authorship is fixed in any tangible medium of expression (drawing, music composition, photograph, or a computer file) (Besen and Raskind, 1991).

Copyright law gives the holder **exclusive rights to authorize the reproduction, translation, adaptation, alteration, public distribution, public display and performance of the work. They may sell these rights or license them to others for a fee**. Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be **no less than 50 years** from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making (TRIPS, Article 12, WTO, 1994). In many countries the term is longer, like 70 years (Europe) or 90 years (US).

Most jurisdictions recognize copyright limitations, allowing **“fair” exceptions** to the creator's exclusivity of copyright, and giving users certain rights. Generally, copyright is enforced as a civil matter, though some jurisdictions do apply criminal sanctions.

How is copyright related to innovation?

Copyright protection can be used to promote the creation of new works by giving authors control over the expressions of such works, so they can profit from them. This type of IP protection may be useful for tracing developments in some highly innovative sectors like software, but also in creative industries (Tang, 1999). Moreover, the development of digital devices has raised new opportunities for providing innovative services based on the use of copyright-protected materials.

As it protects only the expression, copyright offers narrower rights than, e.g. patents. In the case of software copyright protects the source code but not the inventions it implements.

How are copyrights used in practice?

In principle, copyrights are territorial and do not extend beyond the territory of a specific country unless that state is a party to an international agreement. Today most countries are signatories of at least one international agreement concerning copyright protection. However, while many aspects of national copyright laws have been harmonized through international copyright agreements (e.g. Berne Convention), copyright laws of most countries still have some unique features.

Copyright is granted without registration requirements; this makes it more challenging to analyze empirically copyright and its contributions to economic performance. Another implication is that, as opposed to registered IP, the critical factor for copyright to work is enforcement by courts.

References

- Besen, S. M. and L. J. Raskind (1991), “An introduction to the law and economics of intellectual property”, *The Journal of Economic Perspectives*, Vol. 5/1, pp. 3-27.
- Landes, W.M. and Posner, R.A. (1989), “An economic analysis of copyright law”, *Journal of Legal Studies*, Vol. 18/2, pp. 325-63.
- Tang, P. (1999), “The use of copyright as a measure of innovation: Software applications in the digital age”, *Intellectual Property Quarterly*, Vol.1, pp. 71-91.
- Van den Bergh, R. (1998) “The role and social justification of copyright: A ‘law and economics’ approach”, *Intellectual Property Quarterly*, Vol. 1, pp. 17-34.
- WIPO (1996), *WIPO Copyright Treaty, Article 4*, World Intellectual Property Organization, Geneva.
- WTO (1994), *Agreement on Trade-Related Aspects of Intellectual Property Rights of 1994, Articles 9(2) and 12*, World Trade Organization, Geneva.

Source URL: <https://www.innovationpolicyplatform.org/content/copyright>