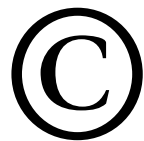


COPYRIGHT AND RELATED RIGHTS ACT, 2000

INFORMATION NOTE





Copyright and Related Rights Section, Intellectual Property Unit

March, 2001

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A: General Notes on Copyright

Nature of Copyright

1. Copyright is a species of legal protection that applies to a number of categories of work, principally the traditional “artistic” categories of literary, dramatic, musical and artistic works, and categories of work which approximate to these traditional categories. Among the latter are computer programs, which are given written expression in specialised languages and are, therefore, protected as “literary works”. Copyright has been recognised by the Irish courts as a property right, supported by statute. The justification for legislation in this area is twofold. First, persons who create works of the intellect or who invest in their creation and dissemination are entitled as a matter of human right to secure a fair return for their creativity and investment. Secondly, unless the rights of creators and investors to a fair return are supported, the community as a whole would be impoverished by the fact that, in many cases, these works would not be created or developed.

“Related Rights”

2. This term covers a range of rights that have been derived from copyright principles. The first group are the “*neighbouring rights*”. These can be described as secondary forms of copyright. The existence of a secondary copyright of this nature - for example, in a sound recording of a performance of a song - does not affect the existence of the underlying, primary copyrights in the song itself (which will be at least twofold - a literary copyright in the lyrics, and a musical copyright in the tune).
3. A second category of related right is that of *performers’ rights and rights in performances*. This is not a true intellectual property right, but a form of “publicity right” involving the right of performers to exclusive exploitation rights in relation to their performances, and the right of purchasers of exclusive recording rights to enforce such rights in relation to performances.
4. A third category consists of the “*moral rights*”, which attach both to copyright and performers’ rights. These rights confer on authors of

works and performers a right to be identified as author/performer, and a right to object in law to derogatory treatment of a work or performance, subject to certain conditions. The Copyright and Related Rights Act, 2000 introduces moral rights into Irish copyright law for the first time.

5. A final category is that of “*sui generis*” rights related to copyright. While intellectual property law world-wide features a number of rights in this category, the only one to feature in the Copyright and Related Rights Act, 2000 is the Database Right, the introduction of which is required by the EU Database Directive.

Operation of copyright/related rights protection

6. In the case of “exclusive rights” such as primary copyright, these protections work primarily by giving the first rightsowner exclusive rights to authorise certain acts (“restricted acts”) which are essential to the exploitation of the subject-matter of the protection. The first rightsowner will generally be the author of the work; an important exception is that of works created by employees in the course of their employment, in which case the employer will be first rightsowner. In the case of copyright works, the restricted acts may (very broadly) be described as “copying”, “distribution” (that is, of physical copies) and “making available to the public” (for example, through Internet sites) - although these acts may take a number of forms. Thus, an author of a work will be given the exclusive right to authorise the copying, distribution, and making available to the public generally of his/her work. This right is time-limited; however, the duration of the protection is long (for copyright works, EU law now requires that the duration period extend for 70 years beyond the death of the author in most cases). During that period, the author, or his successors in title or assignees, may transmit the rights or grant exclusive licences to exploit the work by contract; it is important, however, to understand that however transmitted, the original rights will continue to exist in their original form, with their duration being measured (in most instances) by the life of the author. By contrast with primary copyright and other “exclusive” rights, neighbouring rights such as rights in sound recordings have traditionally been limited to supporting the right of the rightsholder to obtain equitable remuneration or fair payment for the use made of the protected material in some form. Recent years have seen some moves at the level of international law to raise the standard of protection for neighbouring rights. The main result of this trend to date has been the adoption of the 1996 Performances and Phonograms Treaty by the member states of the World Intellectual Property Organisation (WIPO).

Legal/technical reasons for copyright law

7. Contract law alone is insufficient to allow copyright and related rights rightsowners to secure a fair return on their work and investment. This is primarily because of the legal *rule of privity of contract*, which effectively prevents contracts made between two parties from binding a third party who has not subscribed to the agreement. Unless third parties were bound to respect copyrights, the owners of such rights would be unable to secure their fair share of the continuing revenues generated by the exploitation of their creations. Copyright and related rights law overcomes this difficulty by creating continuing rights to control the exploitation of works and other protected materials that can then be traded in by rightsholders. This allows the original rights of copyright owners to be the subject of a string of contracts, thus enabling both original copyright owners and their successors in title and assignees to realise their fair share of the benefits arising from the original act of intellectual creation.

Social and economic significance of copyright and related rights

8. Copyright provides a vital incentive for the creation of intellectual works, including literary, dramatic, musical and artistic works, films and other audiovisual works, computer software and sound recordings. The copyright/ related rights area is also that prescribed by EU and international law for the protection of databases. With the advent of the Information Society, the value to the economy of materials protected by copyright and related rights has become enormous beyond reasonable possibility of quantification - without any reference being made to the vast cultural benefit derived by the community from the creation of the protected materials concerned.

How is a work "copyrighted"?

9. There is no registration procedure for copyright in Irish law. Indeed, compulsory copyright registration requirements are now rare worldwide as such requirements are contrary to international copyright law. A qualifying work obtains copyright once it comes into existence and is fixed in a stable medium (such as the manuscript of a literary work, or a statue). Rightsholders may choose to create evidence of their claim to authorship of a particular work in a number of ways. The most common method is for the author to enclose a copy of the work (including, in appropriate cases, a photograph of it) in a registered envelope, addressed to him or herself. Once it is delivered, the registered package is retained unopened, along with any other evidence created of date of posting and receipt, in a safe place; it will then be available as evidence that its contents existed as the author's creation in a particular form on the date of postage. Another method sometimes used is for the author to swear an affidavit affirming his or her authorship of a work, a copy of which would be appended to the affidavit. Yet another method involves the deposit of a copy of the

work, along with a document claiming ownership on a particular date, in safe deposit (for example, in a bank) where an independent record is kept of the date of deposit (although this is most effective as a supplement to the registered post or affidavit method).

10. Authors should also consider placing at least a simple copyright notice, including the copyright symbol ©, on their work – for example, “© John Smith, 2001”. Examples of more detailed copyright notices may commonly be found in published versions of literary works. The inclusion of a copyright notice does not really constitute evidence of ownership, but does show a claim to copyright which may prove useful if that claim has to be upheld in court at a later date.
11. While the methods of creating evidence and showing claim of copyright ownership may not be necessary in law, authors concerned with their ability to prove ownership in the event of a dispute at a future date should seriously consider employing one or more of them as may be appropriate in the circumstances.



B: Copyright and Related Rights Act, 2000 – Commencement, Objectives, and Summary of Contents

12. The Copyright and Related Rights Act, 2000 came into effect on and from 1 January, 2001. Four minor sections were excluded from this commencement – sections 98 and 247, which provides for an exception from protection in respect of the playing of sound recordings by certain clubs and societies, and sections 198 and 199, dealing with the deposit of books and other materials in certain libraries holding collections of national cultural and educational significance. It is hoped to achieve the objectives of sections 98 and 247 by informal agreement with the relevant copyright licensing body (representing the owners of sound recording copyrights). It is intended to commence sections 198 and 199 following further consultations with interested parties; in the meantime, section 56 of the Copyright Act, 1963 will continue to govern the book deposit scheme.
13. The general objectives of the Copyright and Related Rights Act, 2000 are as follows:
 - to put in place a modern, effective, efficient, technology-neutral regime of statutory protection for copyright and related rights, including provision for civil remedies and criminal penalties fully sufficient to deter copyright theft, bearing in mind the economic and cultural significance of such theft in the context of the Information Society;

- to transpose into Irish law a number of EU directives in the field of copyright and related rights;
- to bring Irish law into conformity with all obligations incurred under international law on copyright and related rights, in particular, under the Berne Convention (Paris Act), the Rome Convention, the TRIPs Agreement, the World Intellectual Property Organisation (WIPO) Copyright Treaty, and the WIPO Performances and Phonograms Treaty, and
- to provide, for the first time in Irish law, for tailor-made regimes of civil protection for performers' rights, rights in performances and non-original databases in line with the best EU and international standards.

Summary of Contents

PART I - Preliminary and General

This Part deals with technical and incidental issues, including interpretation of terms (principally section 2) and the power of the Minister for Enterprise, Trade and Employment to make Orders and Regulations under the proposed legislation.

PART II - Copyright

This is the Part dealing with the substantive provisions on copyright, including the "traditional" neighbouring rights of copyright in sound recordings, films, broadcasts, cable programmes, original databases and typographical arrangements of published editions of works.

The main subjects addressed are:

- the nature of copyright works, and where copyright may be held to subsist;
- authorship of copyright works, and the duration of copyright protection in the various classes of copyright work;
- the rights of a copyright owner in relation to a work, including the exclusive right to authorise the copying (reproduction), making available to the public or adaptation of the work, subject to the provisions of this legislation;
- primary and secondary infringement of copyright;
- the various exceptions to be provided for, derogating from the absolute rights of the copyright owner in certain limited, specified

cases. These are, principally, the “fair dealing” exceptions in favour of private research and study, criticism and review of works, and incidental inclusion of copyright material in another work, and limited exceptions in favour of educational and library/archival use and certain uses in public administration;

- provision for moral rights;
- provisions governing dealings in copyright interests, including assignment (normally by sale/contract) and licensing, and
- remedies for infringement of copyright interests and criminal offences and penalties in the area of copyright, and related technical issues.

as well as a range of technical, incidental and subsidiary issues associated with copyright proper.

PART III - Rights in Performances

This Part provides for a regime of rights, exceptions and sanctions in respect of performers’ rights and rights in performances which is broadly parallel to those provided for in relation to copyright by Part II. It should be noted that the rights protected under this Part may broadly be described as the exclusive right of a performer to authorise the copying or broadcasting of his or her performance, and recording rights (involving the rights of persons who have exclusive recording contracts with performers to protection from damage through illicit recording). Part III represents the introduction into Irish law, for the first time, of a comprehensive regime of protection for this category of right, including (also for the first time) direct legal protection for performers and persons holding exclusive recording rights against illicit direct recording of performances (“bootlegging”).

PART IV - Performers: Moral Rights

This Part provides for a regime of moral rights protection for performers in relation to their performances which is parallel to that provided for authors of copyright works under Part II. Moral rights are afforded a separate Part in this case because they apply to performers’ rights only (the concept of moral rights is not applicable to exclusive recording rights), and following the copyright example by putting them in Part III could, therefore, have posed serious technical drafting problems.

PART V - Databases

This Part provides for a new regime of protection for non-original databases, as required by the EU Database Directive. “Non-original databases” are databases the creation of which does not involve significant intellectually creative input; examples would be simple alphabetical lists such as telephone directories. Up to now, these would have been protected under Irish law by copyright, generally, as literary works; the definition of literary work in the Copyright Act, 1963, includes “any written table or compilation”. However, the Database Directive requires that a higher standard of originality be applied to databases if they are to qualify for full copyright protection. This Part will provide a somewhat more limited form of protection for databases no longer meeting the copyright originality standard.

PART VI - Jurisdiction of Controller

This Part makes provision for the role of the Controller of Patents, Designs and Trade Marks as a tribunal for the resolution of certain disputes regarding copyright licensing schemes.

PART VII - Technological Protection Measures

This Part provides copyright rightsholders with rights and remedies against persons who unlawfully circumvent technological measures designed to protect certain copyright materials - for example, producers of counterfeit “smart cards” for tapping in to encrypted satellite broadcasts and cable programmes, and persons who remove identifying “rights management” features (such as “digital fingerprints”) from copyright materials.

Some “highlights of the Act

- **Technological Protection Measures**

The Act contains new measures to protect encryption and other technological protection devices and makes it an offence to make or sell etc., protection-defeating devices such as illegal ‘smart cards’. In addition, the civil remedies provide for seizure of protection-defeating devices. These measures will be of benefit to, for example, broadcasting organisations and cable programme service providers.

- **Internet and the Digital Environment**

In relation to the Internet, there are ‘notify and take down’ provisions whereby, if infringing material is being carried on a service (for example, by an Internet service provider), and the rightsowners inform service providers that infringing

material is being carried on their service, the service providers will be obliged to remove that material as soon as is practicable. For the avoidance of doubt, protection is afforded specifically to digital representations of copyright materials – for example, the body of digital data embodying a musical or film work that is capable of being “played” as music or a film by means of a device (personal computer, audio system et cetera).

- **Exceptions**

The Act contains a number of exceptions to the acts protected by copyright and related rights. Some of the more significant aspects of the exceptions are listed below:

- **Libraries and Archives**

This Act provides that libraries and archives which are prescribed by the Minister for Enterprise, Trade and Employment will be able to lend works without payment of royalty. These are new exception provisions which will also permit librarians and archivists of prescribed libraries and archives to copy and supply copies of works in certain situations, and to conduct certain acts of curatorial copying, without committing a copyright infringement. The definition of archive for the purposes of the Act has been expanded to include museums within the scope of these exceptions.

- **Schools and Educational Establishments**

The Act provides for a number of exceptions for schools. Schools will continue to pay a licence fee in respect of reprographic copying, provided that the copyright owners establish a licensing scheme. Otherwise, they may copy up to 5% of a work in any given year.

- **Provision of Modified Works for Persons with Disabilities**

The Act introduces provision for the making and supply by non-profit bodies of copies of copyright works and recordings of performances for use by persons having physical or mental disabilities free of royalty without breach of copyright.

- **Moral Rights**

The Act introduces for the first time in Ireland moral rights for authors and performers. Moral rights consist of the **Paternity right** - the right to be identified as the author of a work or, where practicable, the performer of a performance and the **Integrity right** - the right to object to derogatory treatment of a work or a recording of a performance.

- **Dispute Resolution**

The Act clarifies the role of the Controller of Patents, Designs and Trade Marks in the area of dispute resolution and administration of copyright and related rights law. Much clearer criteria in relation to licensing disputes have been laid down. The Controller will also have a new role in the maintenance of registers of licensing bodies which will contain information prescribed under the Act, including such as details of the scales of charges to be levied and the class of rightsholders represented.

- **Remedies and Penalties**

The Act strengthens the range of civil remedies available to rightsowners. It allows for civil search and seizure procedures which should greatly enhance the effectiveness of the civil remedies. It alters the evidential burden in civil and criminal proceedings relating to copyright in favour of the plaintiff/complainant rightsowner, thus facilitating the protection of copyright through legal proceedings. It also contains a provision whereby witnesses in applications for search warrants in civil infringement cases will not be obliged to indicate the source of their information on that infringement, a provision which will protect the identity of persons who give information on alleged copyright infringements to the rightsholders. A typical example of the latter case would be where information is given on alleged infringements by employees of the alleged infringer. For criminal offences, the Act confirms the substantial strengthening of penalties first introduced by the Intellectual Property (Miscellaneous Provisions) Act, 1998 and applies them to copyright and related rights offences generally.

- **Parliamentary and Government Copyright**

A new Oireachtas copyright, reserved to the Houses of the Oireachtas, is introduced in the Act. This provides for copyright protection in works made under the direction or control of the Dáil and the Seanad to reside with the Houses. Amendments introduced in the Seanad also assign copyright in parliamentary Bills and enactments to the Houses of the Oireachtas. The Act

also clarifies provisions relating to Government copyright, which will apply to works made under the direction or control of the Government, and which will subsist for 50 years following the creation of the work concerned.

