

04

COPYRIGHTS

QUESTION EVERYTHING



**Universidad
Europea**

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QUESTION EVERYTHING

1. What is copyright?



What is copyright?



- Copyright is a property right which protects original works such as novels, plays, music, paintings, sculptures, movies, film scripts and computer programs.
- Copyright grants authors a number of exclusive rights
 - (a) economic rights, which allow them to control the exploitation of their work,
 - (b) moral rights, which include the right to prevent the mutilation or false attribution of their work.
- There is a clear distinction to be made between the intangible right in the work and the property right in the physical embodiment of the work.
 - The owner of a painting, for example, is not automatically entitled to make and sell a copy of it.

What is copyright?



- It is also important to be aware of the differences between the system of copyright in the countries applying **common law** and the continental **European Author's Rights system**.
 - The main difference lies in the importance that is attributed to the relationship between the author and his work.
 - In the Author's Rights system, a series of inalienable moral rights are accorded to the author, while the common law approach of the copyright system focuses more on the economic value of the work.
 - In both systems, originality is a key concept in copyright law. But whereas in civil law countries, this means that a work must express the author's personality; the common law countries focus on the skill and labour that go into making a work. This is known as the "sweat of the brow" doctrine. However, more recently the courts here have stated that works must possess a certain level of creativity.
- In recent years, the dividing line between the two systems has become increasingly blurred.

What is copyright?



IN BRIEF...

- Copyright is an intangible type of property granting certain rights to the creator of a work for a limited period of time
- It is distinct from the embodiment of the work
- There is a difference between copyright and Author's rights systems

QUESTION EVERYTHING

2. Scope of protection



What does copyright protect?



- Original literary works
- Original dramatic works
- Original musical works
- **Original artistic works**
- Sound recordings
- Films
- Broadcasts
- The typographical arrangement of published editions

ARTISTIC WORKS

- Graphic works, photographs (excluding a film), sculptures and collages irrespective of artistic quality
 - Works of architecture being a building or a model for a building
 - Works of artistic craftsmanship
- Graphic works are further defined to include paintings, drawings, diagrams, maps, plans, charts, engravings, etchings, lithographs, woodcuts, or any similar works

What does copyright protect?



- Different types of copyright work can exist in the same creative work. For example, a pop song might involve different people owning different copyrights in:

the lyrics

- **as a literary work**

the music

- **as a musical work**

the recording of the song

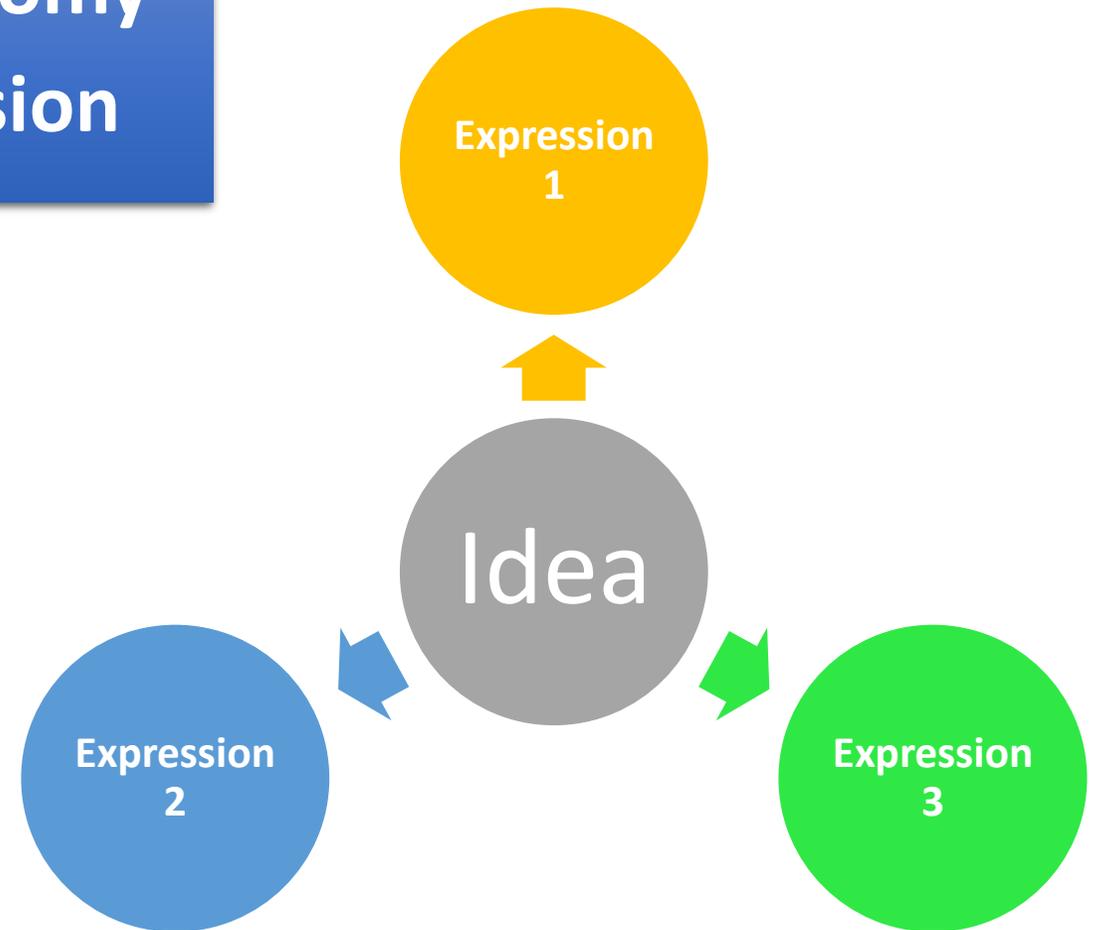
- **a sound recording**

Is it possible to use copyright to protect an idea?



Idea/expression dichotomy Protected: the expression

- Copyright protects the original expressions of ideas rather than the ideas themselves.
- This distinction is known as the idea/expression dichotomy and is a universally accepted principle.



Is it possible to use copyright to protect an idea?



- Copyright does not protect the idea for a work, only **the expression of that idea**.
- There can be many possible expressions of the same idea.
 - For example, the story of a little wizard whose parents have been killed by a dark magician is a simple idea that anybody can use.
 - However, the series of novels about Harry Potter represent a specific expression of that idea worthy of copyright protection.
- An original novel is protected by copyright. To reproduce the novel in its entirety without permission would clearly infringe the author's copyright.

Copyright is not a monopoly right



Source:

<https://99designs.es/blog/tips/5-famous-copyright-infringement-cases/>

- Copyright does not provide the copyright owner with a true form of monopoly protection.
- Copyright prevents others from copying your work (whether they have copied consciously or not), but it does not prevent others from making use of very similar or even identical works **they have independently created** (however unlikely that may be). That is, copyright only prevents others from **copying** your work.

Scope of protection



As a matter of public policy, the courts have refused copyright protection to works they consider to be immoral, obscene, scandalous, or irreligious.

On the other hand, while copyright **prevents** doing certain things without permission, at the same time, it **permits** doing certain things without permission. For example, you can make use of:

- ideas, facts, or information from someone's work, so long as you don't copy the expression of those ideas, facts or information
- an insubstantial part of the work
- the work in accordance with one of the many statutory defences to copyright infringement (these are otherwise referred to as 'the permitted acts')

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3. The protection of software and databases



What about software?



- Computer programs and software are protected as literary works
- EU Directive 2009/24/EC covers the legal protection of computer programs
 - The EU has adopted a special directive to ensure the legal protection of computer programs in all its member states. The Computer Programs Directive defines a computer program as a literary work within the meaning of the Berne Convention.
- Computer programs are considered to include the preparatory design material, but not works integrated into the program, such as algorithms and interfaces.
 - Underlying subject matter is excluded. Ideas and principles which underlie any element of a computer program, including those which underlie its interfaces, are excluded from the scope of protection.

Can databases be protected?

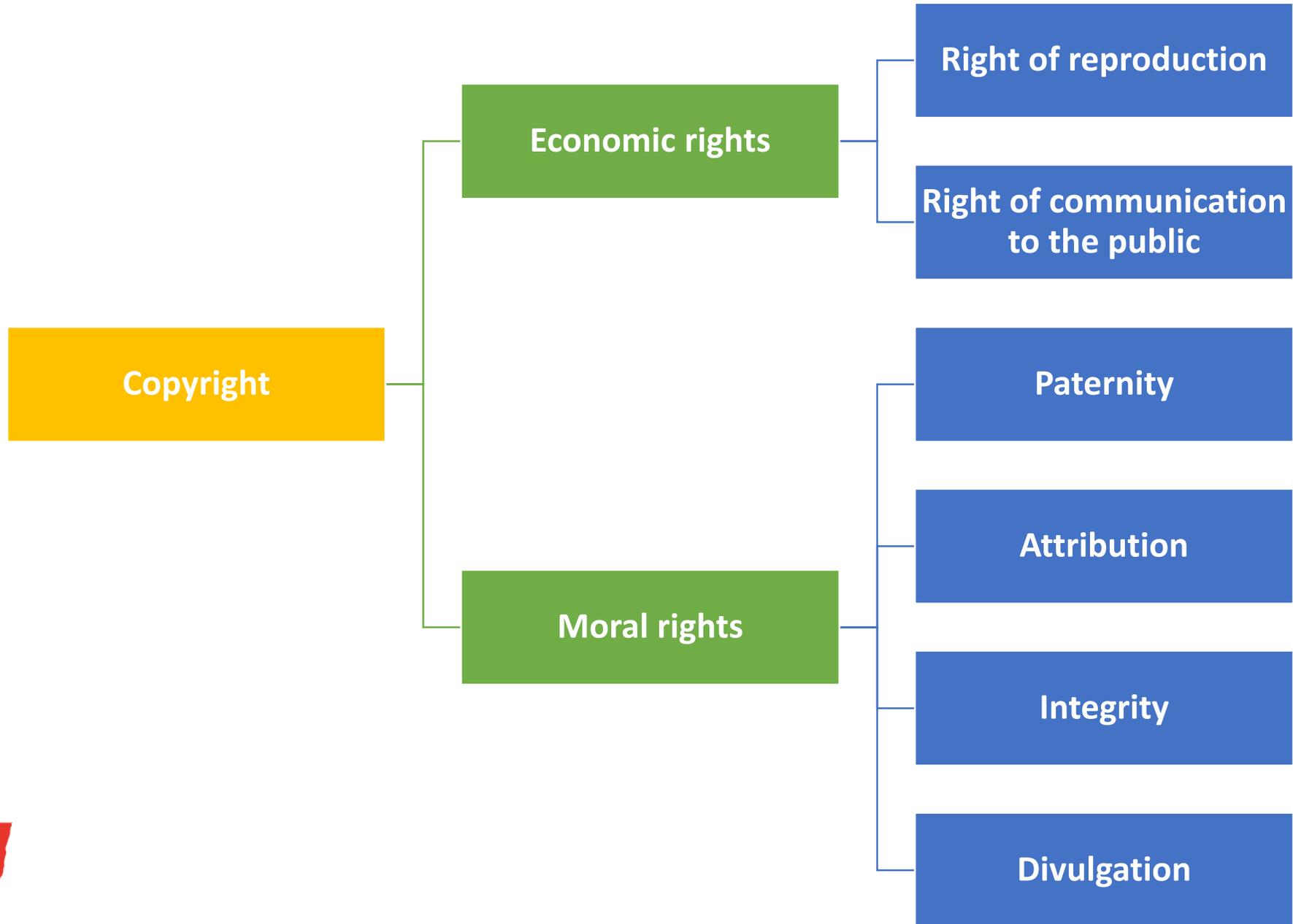


- Databases are also covered by an EU directive.
 - EU Directive 96/9/EC on the legal protection of databases
- Original selection or arrangement of content = copyright protection
 - According to this directive, a database is protected by copyright if the selection or arrangement of its content is original.
- distinct from the material *in* the database
 - Copyright protection does not apply to the software used to organise the database or to the material contained in it.
- Substantial investment = *sui generis* right
 - In addition to copyright protection, databases can also be protected by a sui generis right. To obtain this right, the makers of the database must have made a substantial qualitative or quantitative investment in it.

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4. Economic rights and moral rights





Economic rights and infringement



- **Copyright does not prohibit all forms of copying.** It only prohibits certain types of copying, in certain ways, and under certain circumstances.
- So, while copyright protects the economic interests of copyright owners by preventing unlawful copying and use, at the same time it enables and encourages many forms of lawful copying and reuse.
- Copyright infringement takes one of two forms: **primary infringement** or **secondary infringement**.
 - Primary infringement involves the unauthorised performance of any of the ‘acts restricted by copyright’;
 - secondary infringement provides protection against those who assist the primary infringer, or who import or sell infringing copies.

Primary infringement and the acts restricted by copyright



The **acts restricted by copyright** are the **bundle of economic rights** a copyright owner enjoys in her work. They include the following rights

REPRODUCTION RIGHT

- Right to copy the work

DISTRIBUTION RIGHT

- Right to issue copies of the work to the public

RENTAL RIGHT

- Right to rent or lend the work to the public

PUBLIC PERFORMANCE RIGHT

- Right to perform, show, or play the work in public

COMMUNICATION RIGHT

- Right to communicate the work to the public

ADAPTATION RIGHT

- Right to make an adaptation of the work or do any of the above in relation to an adaptation

Infringement



- Doing any of these acts without permission will infringe copyright in the work, and the owner will be entitled to some form of relief or compensation (unless, that is, your use falls within one of the exceptions to copyright).
- It will not make any difference if the infringing copy takes a different form to the original.
 - For example, converting a two-dimensional image into three dimensions and vice versa, will still be infringement.
- Moreover, it makes **no difference** that the person infringing copyright **did not intend** to infringe or was even aware that she was infringing someone's copyright.
 - Intention and knowledge of wrongdoing are irrelevant.
 - Ignorance is no defence.

Moral rights



In addition to the bundle of economic rights that copyright provides, there are also moral rights in relation to certain types of work. Moral rights are intended to protect the intimate relationship between authors and their work.

- The main moral rights are the **paternity right**, which is the right to claim authorship of a specific work
- The **right of attribution** is the right to be identified as the author of the work
- The **right of integrity** is the right to object to derogatory treatment of a work could distort the work or harm its reputation
- The **right of divulgation**, which is the author's right to decide when he discloses his work to the public.

Moral rights cannot be assigned or transferred. They last for as long as copyright lasts in the work, but they **only** apply to literary, dramatic, musical and artistic works, and films.

- They do not apply to sound recordings, broadcasts or the typographical arrangements of published editions.

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5. Duration of copyrights



Duration of protection



- The term of protection afforded by copyright varies from country to country. It also depends on the type of subject matter.
- As a basic rule, copyright is valid for a period of 70 years after the author's death.
- In the EU, the term of protection is governed by Directive 2006/116/EC on the term of protection of copyright and certain related rights.
- Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights extends the term of protection for performers and sound recordings to 70 years.

Duration of protection



- The **term of protection** for all types of copyright work is **time-limited**. Once copyright in a work expires, the work enters the **public domain** and it is free to be used by anyone for any purpose.
- When considering the rules on the copyright term, we can draw a distinction between:
 - those categories of works for which duration is calculated by reference to an **author's life** (literary, dramatic, musical and artistic works, and films) and
 - **those which are not** (sound recordings, broadcasts, the typographical arrangement of published editions and certain films)

Duration of protection



Literary, dramatic, musical or artistic work	<ul style="list-style-type: none">• Life of the author + 70 years from the end of the year in which the author dies
Co-authored musical works, such as songs	<ul style="list-style-type: none">• 70 years from the end of the year in which the last co-author dies
Film	<ul style="list-style-type: none">• 70 years from the end of the year of the last of four designated persons to die; these persons are: the director, the author of the screenplay, the author of the film dialogue (if different), and the composer of any specifically created film score
Sound recording	<ul style="list-style-type: none">• 50 years from the end of the year in which the film was made. HOWEVER: if, during that 50-year period, the work is published or made available to the public, then 70 years from the end of that year
Broadcast	<ul style="list-style-type: none">• 50 years from the end of the year of transmission
Typographical arrangement of a published work	<ul style="list-style-type: none">• 25 years from the end of the year in which the work is first published
Computer-generated works	<ul style="list-style-type: none">• 50 years from the end of the year in which the work was made
Works of unknown authorship	<ul style="list-style-type: none">• 70 years from the end of the year in which the work was made HOWEVER: if, during that 70-year period, the work is published or made available to the public, then 70 years from the end of that year

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6. Licences



Licences



- A licence is a permission to make use of a work in a way that, without that permission, would constitute copyright infringement. In other words, the grant of a licence means the licensee can make use of the work without infringing the copyright in the work.
- A licence will often be contractual in nature, but it does not have to take the form of a written contract.
 - For example, simply giving someone verbal consent to make use of the work can amount to a licence, and without the parties entering into a formal contract.
- Licences can be exclusive or non-exclusive.
 - An exclusive licence grants use of a work **only** to the person acquiring the licence;
 - by contrast, a non-exclusive licence enables the owner to license the use of her work to more than one person at the same time.

Creative Commons and Open Licences



- Creative Commons (CC) is a non-profit organisation that enables the sharing and use of copyright content by providing easy-to-use copyright licences for authors and other interested organisations.
- Further information about CC licences can be found on the Creative Commons website. <https://creativecommons.org/>
- You will also find lots of open, free-to-use content, on Wikimedia Commons, including images, sound recordings and audio files, and videos. Wikimedia Commons aims to make available public domain and freely-licensed educational media content for use and re-use in any context, not just in the classroom.
- You can find out more here:
commons.wikimedia.org/wiki/Commons:Welcome

Collecting societies



- Authors often authorise a specialist organization (a **collecting society**) to manage their work on their behalf.
 - In Spain, the “Sociedad General de Autores y Editores (SGAE)” carries out that task: <http://www.sgae.es/>
 - In this link you can find a complete list: <http://www.culturaydeporte.gob.es/cultura/propiedadintelectual/gestion-colectiva/direcciones-y-tarifas.html>
- The collective management of rights simplifies the process of securing permission so that **entire categories of copyright works** can be licensed for specific uses by specific institutions or organisations.
 - For example, this might involve permitting photocopying certain parts or portions of published works by students enrolled at a school or a university. The collecting society (in this case, the Copyright Licensing Agency) grants a blanket licence to the school or university on behalf of its members, collects the fee, and redistributes it as royalties to its members.

7. Copyright and the Internet

COPYRIGHT IN THE DIGITAL SINGLE MARKET

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Copyright and the Internet



- Contrary to widespread belief, material posted on the internet - including in blogs, chat rooms and e-mails - cannot always be used without permission.
 - Internet service providers are exempted, provided that they are unaware of any unlawful activities by its clients and that, upon obtaining such knowledge or awareness, they act expeditiously to remove or disable access to the information.
 - Providers of “peer to peer” file-sharing software are liable for copyright infringement on the basis that they distribute “a device with the object of promoting its use to infringe copyright, as shown by clear expression or other affirmative steps taken to foster infringement.”
- In response to the massive scale of the reproduction of protected works on the internet, copyright-holders have developed and implemented technological measures aimed at preventing unauthorised use.
 - These include technical devices that prevent copying. However, users have found ways to circumvent these barriers, an act which is in itself prohibited in many countries.

Timeline of the Digital Single Market Directive



Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (Text with EEA relevance.)
<https://eur-lex.europa.eu/eli/dir/2019/790/oj>

New!!! Digital Single Market Directive



After more than two years of negotiations, the co-legislators agreed on a new set of copyright rules, including two controversial provisions:

- 1) the creation of a new right that will allow press publishers to claim remuneration for the online use of their publications (**Article 15**), and
- 2) the imposition of content monitoring measures on online platforms such as YouTube, which seeks to resolve the 'value gap' and help rights-holders to better monetise and control the distribution of their content online (**Article 17**)

Must read article:

<https://www.bbc.com/news/technology-47239600>



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What is Article 13? The EU's copyright directive explained

By Chris Fox
Technology reporter

© 14 February 2019

f t Share

Article 13

GETTY IMAGES

The final version of a controversial new EU copyright law has been agreed after three days of talks in France.

- Article 13 of the EU Copyright Directive states services such as YouTube could be held responsible if their users upload copyright-protected movies and music.
- **Will Article 13 affect video game streamers?**

QUESTION EVERYTHING

8. Copyright registration



Copyright registration



- Copyright protection exists from the moment a work is created. Registration is not necessary in order for copyright to exist.
- However, an optional registration process is available in some countries. Registration can be useful as it can help prove that the work existed at a certain date in the event of infringement.
- The “©” symbol is used to show that the work benefits from copyright protection. While not mandatory, its use is a highly visible way to emphasise that that work is protected by copyright and that all rights are reserved.

Copyright registration in Spain



- Spanish Intellectual Property Register (Ministry of Culture)
<http://www.culturaydeporte.gob.es/cultura-mecd/areas-cultura/propiedadintelectual/registro-de-la-propiedad-intelectual.html>

Is copyright protection valid worldwide?



These are the main international conventions relating to copyright:

- Berne Convention
- Universal Copyright Convention (UCC)
- TRIPS Agreement
- WIPO Copyright Treaty (WCT)

All of these treaties include the principle of national treatment. They establish minimum standards for the member states and for the national copyright legislation of the signing countries and territories.

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