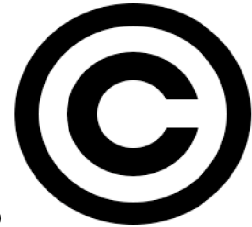




## COPYRIGHT – DROIT D'AUTEUR GUIDELINES

### What is copyright?

**Copyright** is a set of exclusive rights regulating the use of a particular expression of an idea or information. At its most general, it is literally "the right to copy" an original creation. In most cases, these rights are of limited duration. The symbol for copyright is ©, and in some jurisdictions may alternately be written (c)<sup>1</sup>.



### The economic rights of the author

The economic rights of the author are not limited to a *numerus clausus* and so are recognised in a generic form. However, contracts on "droit d'auteur" must be interpreted in a restrictive manner, and so it is impossible to infer in favor of the co-contracting party wider set of rights than those explicitly mentioned.

The limits of exploitation of "droit d'auteur" know only the limits or exceptions established by law. The time limit is one of the most important ones (see "How long does the protection last?" below for more information).

The use of a work implies the right of the author to receive a payment. In fact, the cases where one can use the work for free are considered exceptions and are limited by law. The monetary gains that the author receives from the use of his work are the payments for his intellectual activity, it is to be considered like a salary, these payments are usually referred to as royalties. The payment is usually generated by two forms of use:

- Reproduction of the entire or partial work in a tangible form (reproductions).
- Communication to Public of the work in an intangible form, by exposition, representation, broadcasting (radio & TV), etc.

The right to reproduction is the right to commercialize one's work, under its original or modified form, on any type of media that allows its publication and enables one to obtain one or more copies of the entirety or part of the work.

The right to communicate the work to the public is composed of any act in which a group of people have access to the entire or a part of the work, under its original or modified form, by other means than by distributing copies.

### Is the protection international?

In principle, each legal system is always national. Swiss law accordingly provides copyright protection and neighbouring rights only in Switzerland. International agreements have, however, been concluded in order to ensure international protection. These agreements in particular provide that, in accordance with the principle of national treatment, Swiss authors enjoy the same protection in a foreign country as an author from that country. If you wish to know whether, as a Swiss national, you also have protection in a particular country, you must find out whether this country and Switzerland are both signatories to the same agreement. Most industrialised nations have signed the most important agreements relating to copyright (Bern Convention) and neighbouring rights (Rome Convention)<sup>2</sup>.

The Berne Convention for the Protection of Literary and Artistic Works (hereafter CV Bern or Bern Convention) is an international agreement on copyright or "droit d'auteur", first signed in Berne in 1886. Its aim was to set up a reciprocity system for the protection of literary and artistic works in the signatory countries. Thus, the work of one author in one member country would be protected in the same way in the other signatory countries. Today, 162 countries are members of this Agreement.

### How does one protect a copyright?

A copyright or « droit d'auteur » is automatic, it does not need to be registered for one's original creation to be protected. Instead, "as soon as the work is fixed", that is, written or recorded on some physical medium, its author is automatically entitled to all copyrights in the work, and to any derivative works unless and until the author explicitly disclaims them, or until the copyright

1 From Internet: <http://en.wikipedia.org/wiki/Copyright>

2 From Internet: Article named "The Copyright" found on Swiss Federal Institute of Intellectual Property – <http://eige.ch/E/urg/u10.shtm>.

*expires*<sup>3</sup>. This principle was standardized in the 1886 Berne Convention, which went as far as to prohibit the required formal registration (this was done in the USA before they became part of the Convention).

However, despite the protection depending on the act of creation and not the recognition by some authority, it is always a good thing to carry out a few formalities to be on the safe side (facilitate proof of creation and date mostly). For example, in some countries, copyright registration offices still exist and offer the possibility to register the works so that the registration be used as evidence in a court of law with reference to disputes relating to copyright.

This also means that the work itself need not be marked. Marking the work "copyright" or "all rights reserved" or "©" has no influence on protection, but is a useful indication for third parties and, in certain cases, may be considered a kind of "warning"<sup>4</sup>.

The correct form for a notice is:

"Copyright [dates] by [author/owner]"

You can use C in a circle © instead of "Copyright". The phrase "All Rights Reserved" used to be required in some nations but is now not legally needed most places. In some countries it may help preserve some of the "moral rights."<sup>5</sup>

**How long does the protection last?**

The Berne Convention standardized a **minimum** length of protection, which is different depending on the type of artistic work. For instance, excluding photographic and cinematographic works, the protection period is at least 50 years after the author's death. However, the Convention allows member countries to extend this protection if they so desired.

For photographs the minimum is 25 years from the year the photograph was created. For cinematography the minimum is 50 years after first showing, or 50 years after creation if it hasn't been shown within 50 years after the creation.

However, many countries have extended the duration to **70 years after author's death (including for photographic and cinematographic works)**.

**Summary of protection length (minimums set by Berne Convention)**

<i>Type</i>	<i>Minimum length of protection set by Berne Convention</i>	<i>Extensions / Exceptions</i>
Literary & artistic work (except photographic & cinematographic works)	50 years <b>after the author's death</b>	<ul style="list-style-type: none"> <li><b>EU</b> increased protection to <b>70 years after the author's death (including photographic and cinematographic works)</b></li> <li><b>US</b> increased protection to <b>70 years after author's death and 95 years for corporate authorship (including photographic and cinematographic works)</b></li> </ul>
Photographic work	25 years <b>from the year the photograph was created</b>	
Cinematographic work	50 years <b>after first showing, or 50 years after creation if it hasn't been shown with 50 years after the creation</b>	

In Swiss Law, the minimum length of protection is set to 70 years after the author's death (including photographic and cinematographic works) , and 50 years for neighbouring rights.

**Difference between original work and derivative work**

Original works are meant in the sense of primitive, whereas derivative works, are those based on other pre-existing works, such as translations, adaptations, arrangements of music and other

3 Op. Cit. 1.

4 Op. Cit. 2..

5 From Internet: Article named "10 Big Myths about copyright explained", Brad Templeton, <http://www.templetons.com/brad/copymyths.html>.

alterations of a literary or artistic work. Nevertheless, they receive the same protection as original works (Art. 2 al. 3 CV Berne)<sup>6</sup>.

### **What are the rights attached to copyright**

(Found in Convention of Berne)

Subject to certain permitted reservations, limitations or exceptions, the following are among the rights which must be recognized as exclusive rights of authorization:

- the right to translate (art. 8 CV Berne),
- the right to make adaptations and arrangements of the work (art. 12 CV Berne),
- the right to perform in public dramatic, dramatico-musical and musical works (art. 11 CV Berne),
- the right to recite in public literary works (art. 11<sup>ter</sup> CV Berne),
- the right to communicate to the public the performance of such works (art. 11 CV Berne),
- the right to broadcast (with the possibility of a contracting State to provide for a mere right to equitable remuneration instead of a right of authorization) (art. 11<sup>bis</sup> CV Berne),
- the right to make reproductions in any manner or form (with the possibility of a contracting State to permit, in certain special cases, reproduction without authorization provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author, and with the possibility of a contracting State to provide, in the case of sound recordings of musical works, for a right to equitable remuneration) (art. 9 CV Berne),
- the right to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work.

The Convention also provides for "moral rights," that is, the right to claim authorship of the work and the right to object to any mutilation or deformation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to the author's honor or reputation.

However, the Trade-Related aspects of Intellectual Property rights (TRIPs) Agreement, which generally refers to the Berne Convention as a basis for copyright, did introduce a provision towards art. 6bis of the Berne Convention, which is precisely the article protecting the moral rights of the author.

In conclusion, the situation is hardly as clear as day, however, the general rule is that countries whose law is based on a more *Romano-Germanic* tradition tend to be in favor of "droit d'auteur" whereas those based on *Common Law* are closer to copyright.

For more information, please feel free to visit:

- World Intellectual Property Organisation, <http://www.wipo.int>.
- Swiss Federal Institute of Intellectual Property, <http://www.eige.ch>.
- Definition of Copyright from Wikipedia, <http://en.wikipedia.org/wiki/Copyright>.
- What is Copyright? site, <http://www.whatiscopyright.org>.
- 10 Big Myths about copyright explained, Brad Templeton, <http://www.templetons.com/brad/copymyths.html>.

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6 WIPO Intellectual Property Handbook: Policy, Law and Use, Ch. 5 - International Treaties and Conventions on Intellectual Property, p. 263.