Creativity and copyright

Copyright and copyright protection

Copyright is a human right. On the one hand it protects the moral and intellectual relationship of the author to their work, while on the other it gives them the right to decide on the exploitation of their works.

That both makes copyright a moral right, safeguarding the identity of the work and the intellectual and moral interests of the author, and serves as the “employment law for creatives”, helping to secure a reasonable remuneration for the use of the work.

Copyright protection arises upon the completion of the work - no further formalities such as registration or lodgement need to be observed. In principle, the author is protected by copyright law. Third parties such as clients or employers can only acquire rights to use the work.

Copyright ends 70 years after the death of the author. Thereafter a work enters the “public domain”, i.e. it can be exploited by anyone. Nevertheless, there are some not uncommon exceptions that have to be noted. Sometimes, for instance, what seems one work is actually two. Anyone wanting to use a photograph of a work by Michelangelo, for example, does not need to bother about the rights from the heirs of Michelangelo, but probably will need to acquire the rights from the photographer who took the photograph. If the photograph is of a protected work, though, both rights must be clarified.

Work and types of work

A copyrighted work is a personal intellectual creation. It is only the actual work that is protected: an idea that has not yet become a work is not protected. The technique used to create the work, and the style, enjoy just as little protection. Independent preliminary stages towards a work (e.g. the script for a film, sketches for a painting, etc.) and excerpts of a work are certainly protected.

It is difficult to offer a conclusive definition of different types of work, since new types are constantly being developed. Copyright law mentions, among others, literary works, musical works, pantomime works and choreographies, works of visual arts, photographic works, film works and technical representations.

Exploitation rights

Exploitation rights enable the author to decide whether and in what form their work can be used for commercial or non-commercial purposes. The author is in principle entitled to a reasonable remuneration for every exploitation.

Initially the author only has the right to decide on the form in which their work is going to be used, i.e. to permit it or refuse permission. Frequently, however, the author has already granted key rights of use to their client before creating the work, e.g. granting a film producer all the rights required to exploit a film.

Other rights concerning use of the works of authors:

To make physical reproductions of a work, the creator of the copies first needs the reproduction right. A newspaper publisher, for instance, needs it in order to publish protected works in the print version of a daily newspaper. A download of a work also counts as reproduction because a new (digital) version of the work is being created.

The distribution right allows the author to decide whether and in what form reproductions are made available (distributed) to the public. The right is usually granted along with the reproduction right, but it can have independent significance if the reproduction was created abroad.

The exhibition right is the right to exhibit a work of visual arts in the public for the first time – the right extinguishes after the first exhibition. Following the sale of a work, the owner decides whether the work can be exhibited. The exhibition right thus has little practical importance.

Performance and presentation rights allow a work to be presented on a stage, e.g. a film being presented to the public in a cinema.

The right to make available to the public includes what is known as the “online right”, which is required for all transmission processes that are executed on demand. In the case of streaming, for instance, only the online right applies; if the work can also be downloaded, the reproduction right is also relevant.

Broadcasting rights can be granted to enable a work to be transmitted on radio or television. The method of transmission (e.g. satellite, cable, DVB-T, internet) is immaterial. The distinction from the “right to make available to the public” (internet right) is governed by the criterion of the programme: the broadcasting right applies if the work is being transmitted in a programme on a fixed channel. If, however, the user alone can decide when to receive the work, the internet right is required.
Cable retransmission is offered by service providers who retransmit radio and/or television programmes on their cable networks simultaneously, in full and without any modification from its primary broadcasting. For example, a cable network operator receives satellite signals on a cable headend and retransmits these signals to a residential area.