Basics on copyright
Copyright within the framework of the publications of the EU institutions and bodies, agencies and other decentralised organisations

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Annex — Useful Links
1. Intellectual property rights

Intellectual property (IP) is a term commonly used to describe those creations of the mind that are entitled to receive legal protection in the form of exclusive rights, that is to say exclusive control of protected works conferred to the creator or creators. Through a system of intellectual property rights (IPR), it is possible not only to ensure that a creation is attributed to its creator, but also to secure the ownership of that creation and to obtain benefits (commercial, strategic, political, etc.) from it. Thus, the purpose of IPR is not only to protect but also to foster creativity and innovation.

IPR covers a variety of creative works, among which are:

- scientific, literary and artistic works;
- inventions;
- images (e.g. satellite images), photos and designs for objects;
- symbols, logos and names used in commerce;
- performances and broadcasts;
- software, databases and integrated circuits;
- origin of certain types of products and new variety of plants;
- industrial methods/processes and know how;
- chemical formulas and materials.

**INTELLECTUAL PROPERTY RIGHTS**

**INDUSTRIAL PROPERTY RIGHTS**
- e.g. patents, utility models, industrial designs, trade marks, trade secrets

**COPYRIGHT, RELATED RIGHTS**
- Literary and artistic works;
- musical, dramatic and choreographic works; films and multimedia products; computer programs and databases
A single product may combine different types of IP, which can be protected under different IP-regimes. Think, for example, of a mobile phone. A trademark can protect the name and logo of the mobile phone’s manufacturer (Samsung, Nokia, etc.). The parts and process of the phone that help to communicate may be patented inventions. The design (the style and appearance of its icons, buttons, etc.) may be protected by industrial designs. The operating manual, an original written text, is protected by copyright.
Copyright is a set of exclusive rights accorded automatically under law without any registration formalities, at the time of creation, to creators of literary and artistic works. Copyright is, in principle, a universally recognised right and is generally valid for a time period that covers the lifetime of the creator and 70 (sometimes 50) years following his/her death depending on the national jurisdiction. Copyright encompasses two main elements: the economic rights and the moral rights. While economic rights relate to the creator’s right to derive economic benefit from the work (including the right to sell or assign the ownership to someone else), moral rights relate to the creator’s inalienable rights (such as the right to be named as the creator, which in most jurisdictions cannot be transferred).

Copyright (‘droit d’auteur’) was established with the intention to allow creators and authors to have control over the reproduction or copying of their work and to receive financial remuneration so that they could continue their intellectual work and contribute to the flow of ideas and learning. This means that copyright law protects the owners of rights in their works against those who ‘copy’ or reproduce, store, cut, amend, modify or disseminate it.

All forms and methods of public communication, not only printed publications but also such matters as sound and television broadcasting, films for public exhibition in cinemas, etc. and even computerised systems for the storage and retrieval of information are covered by copyright protection. Hence copyright must always be considered in all activities of EU institutions/agencies/bodies.

Copyright is an exclusive right (provides for exclusive control or possession of protected works). It means that property rights belong to no other than the copyright owner, in the same way that someone may own material property (a car, a house, jewellery, etc.). The copyright holders alone can reproduce, adapt or translate the work or communicate it to the public. The copyright holders can forbid others (users, readers, viewers, listeners, editors, etc.) from using, reproducing, copying, adapting, translating, communicating, etc. their work without authorisation.
2.1. What kind of work is protected by copyright?

Copyright protects a wide range of creations and works of the human mind regardless of their merit, value or purpose, provided they are original. Such works may include:

- **Written work** — books, speeches, magazines, press and newspaper articles, scientific and literary texts; writings of any kind, letters, e-mails, poems, interviews, translations, adaptations from existing works(1) and subtitles; short titles and headings of novels, news articles, films, songs or slogans; web pages, advertisements, lessons, lectures, speeches, sermons, dubblings, or any other written manifestations of thought, or any written works whatever the mode or form of expression and dissemination.

- **Artistic work** — art works, such as paintings, drawings, sculptures, photographs, comics, architectural works (e.g. Berlaymont building), or any artistic work, whatever the mode or form of expression and dissemination.

- **Musical work** — compositions, lyrics, songs and ring tones, whatever the mode or form of expression, in all formats (sheet music, CDs, MP3 files, etc.) and all dissemination modes (internet, peer to peer forums, etc.)

- **Dramatic and choreographic work** — plays, operas and dance or any dramatic and choreographic work, whatever the mode or form of expression and dissemination.

- **Films and multimedia products** — movies, video games, TV programmes, cartoons or any other film and multimedia products, whatever the mode or form of expression and dissemination.

- **Computer programmes and databases** — human (source code) and machine (object code) informatics coding written in computer programming language, databases or any other computer programme or database, whatever the mode or form of expression and dissemination.

Even cartoon or movie characters taken out of the original works in which they are usually shown may attain copyright protection. For example, characters such as Charlot, Asterix, Tarzan, Donald Duck and Tintin are copyright-protected and can only be reproduced with the express permission from the relevant copyright holder.

(1) Such as adapting a novel to a movie.
2.2. What kind of work is not protected by copyright?

Not all literary work benefits from copyright protection. Some may fall within the public domain. Such public domain work is, for example, speeches and sermons made in deliberative assemblies, in public hearings of courts or in political meetings and can be freely reproduced and communicated to the public.

Official acts of the authorities and texts of law, directives, regulations, green papers of the Commission and other regulatory writings, court judgments, notary acts and parliamentary debates are also generally exempted from copyright protection.

Other examples of non-protected works are bank extracts, internal and administrative notes, invoices, forms, documents and circulating notes inside a company, payments, statistics, yearly reports and activity reports.

2.3. When is a work protected?

A work is protected from the moment of its creation. It does not need to be completed or finished. However in order to attain copyright protection, the work must meet the following two criteria.

- **Form**: the idea of the author must be expressed in a form which allows its communication to the public.
- **Originality**: the author must express the idea originally.

Ideas, procedures and methods or mathematical formulas per se are not protected by copyright. They need to be expressed originally in a form that allows communication to the public in order to be protected by copyright law.

By meeting the above criteria, copyright is granted automatically for the work, even if it is not yet finished. Please note that some national copyright laws (e.g. the United States) may require formal registration in order for the work to benefit from a stronger protection. There is no requirement for the work to be good, new or have artistic or scientific merit.

It should also be noted that the scientific and natural discoveries, historical events or the information itself included in the work do not benefit from copyright protection. Therefore a newspaper’s publisher or a press agency, for example, is not the copyright owner of the published information per se, but only of its original expression. Another newspaper or an EU institution/agency/body can for that reason use the very same information for its press article in order to create its own original expression from exactly the same information.
2.4. How long does copyright last in the European Union?

For most purposes, the current protection granted by copyright in the European Union and in the countries of the European Economic Area lasts for the author’s lifetime and 70 years after their death.

For EU publications, copyright lasts 70 years from the date of the first publication (the EU being a legal person).

After that period the work falls in the public domain, and can then be freely exploited (e.g. copied or reproduced).

2.5. How are creations protected by copyright?

Copyright protects works by giving two sets of rights to the rights owners:

- economic rights; and
- moral rights.

2.5.1. Economic rights

Economic rights give the author or copyright holder the exclusive right to exclude others from performing certain acts with respect to the economic exploitation of the work. The copyright owner has the right to derive a financial reward from the use of the work by others.

There are various ways to exploit the work (modes of exploitation). The most traditional economic right is the reproduction (‘copy’) right that covers not only the traditional printing and publication of the work but also its storage in computer memories and other electronic media.

The author or copyright holder has, among others, the right to communicate, translate or modify the work.

The author can assign (‘sell the ownership’) the economic rights to others or grant (‘rent’) user rights, so-called licences, for works protected by copyright or related rights.

Economic rights can be assigned or licensed as a whole. That means that the person to whom the rights have been assigned or to whom the licence (user rights) has been granted can make use of all forms of exclusive rights to exploit the work while respecting the author’s moral rights.
A partial assignment or licensing is also possible. That is to say that the author or the copyright owner/holder retains some of the economic rights (e.g. adaptation and translation rights) and only assigns or licenses the reproduction and distribution rights to the other. This is common for scientific publications, for example. The scientist usually retains the right of adaptation and translation and only gives permission to the scientific journal to publish the work.

It is important to note that all contracts affecting the author must be made in written form. All modes of exploitation, which the parties want the contract to cover, must also be mentioned explicitly in the contract. Otherwise they are deemed to remain with the author or the previous copyright holder.

2.5.2. Moral rights

Authors have the following moral rights.

- **Divulgation (disclosure) right:** only the author has the right to decide whether the work is ready to be divulged. Even if the work seems ready to the eyes of third parties, the author cannot be forced to divulge the work.

- **Acknowledgment of authorship (paternity):** the author will always retain the right to be recognised as the creator of the work. The acknowledgment is made by mentioning the name of the author. For example, Ludwig van Beethoven will always be recognised as the composer of the *Ode to Joy*, even though he died in 1827.

  The author also has the right to hide the authorship and publish the work anonymously or under a pseudonym.

- **Respect for the work’s integrity:** The author will always have the right to object to the work being altered or distorted in its content or even used in contexts which may prejudice the honour, reputation or image of the author.

  For example, the publication of a photo in a press article printed on paper of second-rate quality that changes the artistic effects of the photo or linking the photo with a text that gives a different meaning to the photo than that which the photographer had intended, are such reuses that might lead the photographer to exercise the right of objection.

  The extraction of news articles from politically diverse newspapers and the regrouping of them together under a common theme might in certain cases prejudice the author’s (e.g. journalist’s) honour, image or reputation and consequently breach the author’s right to the work’s integrity.
Moral rights can generally not be assigned. These rights will always remain with the author irrespective of whether the economic rights have been transferred.

However, the authors can renounce or waive their ability to exercise moral rights. An overall waiver of the future practice of the moral rights is however not possible according to Belgian copyright law, for example, but the waiver must be specific and express.

Please note that different national copyright laws give different meanings to the author’s moral rights. In France the author’s moral rights are absolute in the sense that the author does not have to prove that she/he has suffered any prejudice. In Germany and the Netherlands the author can only oppose if she/he can prove the prejudice. In British law the concept of limited moral rights were only introduced in 1988 and only granted to certain categories of authors. For example, news journalists are not recognised as ‘authors’ under UK law. Therefore the relevant national law should always be consulted.

2.6. Who owns the copyright?

The owner or holder of the copyright is either

- the original author(s), creator(s) — such as a journalist, writer, composer, sculptor, artist, photographer, performer or any other human creator (later jointly referred to either as the ‘creator’ or the ‘author’); and/or

- the natural or legal person(s) to whom the copyright has been assigned, i.e. ‘sold’ — such as a producer, publisher, broadcaster, employer, or any other interested person to acquire copyright from the original author(s) or previous right holder(s), (hereinafter jointly referred to either as the ‘rights holder’ or the ‘rights owner’).

Sometimes more than one person can participate in the creation of the work. In these cases, all of those who contributed to the creation of the work are considered to be its co-authors and they share the copyright of the collective work.

Please note that the original author(s), natural person(s), is/are initially the only holder(s) of all the rights — moral and economic — of the work. The original author(s) exploit(s) all these rights by way of transferring the rights to natural or legal persons. For example journalists, when making the news article available to the public, may have transferred all or some of their rights to the newspaper or publisher.

The transfer of rights may be either whole or partial. Consequently, one copyright protected work may have different right holders depending on how the original creators have exploited their rights. The re-exploitation (reproduction, communication, modification, etc.) of the
same work by a third party (e.g. the Commission) may therefore require permission from different right holders. Therefore, if an EU institution/agency/body wants to reproduce the above-mentioned news article for internal purposes, it may need to seek permission from the journalist who wrote the article as well as the concerned newspaper or publisher. The collecting societies (organisations created for the common management of rights on behalf of copyright owners) may also play an important role here, so their consent might also be required. See more information about collecting societies later on in these guidelines.

It should be noted that copyright, as an intangible property, exists from the moment of creation (e.g. music) and is then fixed on a physical medium (e.g. a CD), a tangible property. Hence, the buyer of a music CD does not get the ownership rights to the copyright but only the right to listen to the music fixed on the CD. The author(s) retain(s) the rights to the creation itself. Equally, a person may own a book but this does not make the person the owner of the copyright to the text, photos and illustrations contained in the book. Therefore, since these persons do not own the copyright of the contents of the books and CDs, there are limits as to what they can and cannot do with these products.

Who owns the copyright in works created under employment?

The general principle is that the initial copyright in the works created under employment belongs to the natural person or employee who created the work. The author, or creator, can however transfer the economic rights of works to the employer by an explicit agreement, either in the form of an employment contract, or in a separate contract.

**Important!** Note that Article 18 of the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities stipulate the following:

> ‘All rights in any writings or other work done by any official in the performance of his duties shall be the property of the European Union where such writings or work relates to its activities or, where such writings or works relate to activities of the European Atomic Energy Community, the property of that Community. The Union or, where applicable, the European Atomic Energy Community shall have the right to acquire compulsorily the copyright in such works.’

Consequently the economic rights of works created by EU officials are transferred by this provision to the employer, the European Union (or the EU institution/agency/body having the legal personality).
2.7. What acts infringe copyright?

Without the rights holder’s express authorisation, the following acts constitute a copyright infringement:

- copying, directly or indirectly, the work as a whole or part of it;
- distributing, directly or indirectly, the copies to the public as a whole or part of it;
- performing, directly or indirectly, the work in public as a whole or part of it;
- communicating, including making available online, directly or indirectly, the work to the public as a whole or part of it;
- translating, directly or indirectly, the work as a whole or part of it;
- modifying, directly or indirectly, the work as a whole or part of it.
National copyright laws — based on the list of exceptions and limitations included in Directive 2001/29/EC — limit the economic rights of the copyright holder in different ways. Note, however, that these limitations must be interpreted in a restrictive manner. In case of doubt, national courts usually apply the rule in the favour of the copyright holder.

It should also be noted that the approaches of Member States’ copyright laws differ from each other, thus the respective national law should always be consulted together with a specialised lawyer in case you (e.g. EU institution/agency/body) have doubts on whether the concerned work is free from copyright protection.

Below you will find some examples of exceptions granted by Belgian copyright law:

- **Short quotations** are allowed only for the purpose of criticism, polemic, review or teaching or in scientific works. The law continues that short quotations must be justified by the purpose, do not prejudice the author’s rights and be in accordance with the fair practice of the profession. Short quotations must always be accompanied by a source indication and the name of the author.

- **Reporting on current events** is an exception granted by law usually only for the benefit of the press. Professionals of the press are allowed to reproduce and communicate short fragments of the works to the public when reporting on current events.

- **Works exhibited in a public place** is an exception that allows for the reproduction and communication of a work in such a case where the aim of the reproduction or communication to the public is not the work itself. For example, a sculpture or a copyright-protected building (e.g. the Berlaymont) could form a background for an interview with a Commissioner.

- **Private communication** of the works and reproduction of sound and audio-visual works is allowed exclusively within a family circle. This exception usually does not extend to covering internal communication within the EU institutions/agencies/bodies.

- **Private and educational reproduction** of works in part or in whole are allowed if such a reproduction is intended strictly for
private or educational purposes and does not bias the publication of the original work.

- **Caricature, parody and pastiche** of the works are allowed in line with the fair practice of the field.

Exceptions and limitations are subject to the so-called ‘three-step-test’, which is to say that they may ‘only be applied in certain special cases which do not conflict with the normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rights holder’.
4. Literary works of the EU institutions, agencies and other decentralised organisations

When creating a publication or document, whether printed or in electronic format, it is essential to ensure that the intellectual property rights of the European Union institutions, agencies and other decentralised bodies are protected, as well as those of third parties.

For this purpose, two fundamental aspects must be taken into consideration:

- if the necessary rights have been obtained from third-party copyright holders before incorporating any of their material, whether textual or artistic, in a publication or document;
- whether third parties are entitled to reproduce and/or translate and further disseminate the publication or document.

For publications or documents issued by the European Union institutions, agencies or other decentralised bodies, the Publications Office recommends, in general, the enforcement of the terms of Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the reuse of public sector information (‘(…) in order to ensure fair, proportionate and non-discriminatory conditions for the reuse of such information’).

For publications or documents issued by the European Commission, the Publications Office enforces the terms of Commission Decision 2011/833/EU of 12 December 2011 on the reuse of Commission documents. See point 5.

The processing of copyright requests for permissions of reuse may, however, be subject to prior consultation with the relevant author service.
4.1. EU copyright wording

If copyright protection is being claimed by the originating department, requests for publications must include a relevant proposal in one of the following forms.

- Sole reserve, stating that the publication is entirely protected:
  
  © European Union (or Euratom or other legal personality), (year)
  
  or

  © European Union, (year)
  All rights reserved.

- Limited protection, with appropriate qualification, authorising reproduction, whether for non-commercial or commercial purposes:

  © European Union, (year)
  Reproduction is authorised provided the source is acknowledged.

- Limited protection by publications produced by the European Commission, according to the reuse decision (see Chapter 5):

  © European Union (year)
  Reuse authorised provided the source is acknowledged.

4.2. Third-party copyright

Whenever third-party textual (articles, studies, reports, etc. or excerpts thereof) or artistic (photos, graphs, drawings, etc.) material is included within an EU publication, whatever the medium, the institution or body shall be responsible for obtaining the author’s consent in writing, and shall pay any fees required for the rights granted and ensure that appropriate acknowledgement is given in the publication.

The so-called ‘free’ images or photos found on the internet or purchased on a CD-ROM may not be in the public domain! They may be copyright-protected. Therefore, it is essential to respect all terms of use specified, if any.
4. Literary works of the EU institutions, agencies and other...

4.3. Third-party copyright wording

When using third-party material, whether textual or artistic, appropriate acknowledgement must be given to the author or copyright holder thereof (for photos, for example, a concise caption can be inserted). An additional courtesy acknowledgement may be mentioned as follows: ‘Reproduced with the kind permission of the author(s).’

However, should an author or copyright holder or his/her legal representative object to any use of his/her textual or artistic material other than dissemination by the EU institutions or bodies within their publication, the originating department shall respect this condition by displaying a relevant notice.

The latter may be printed directly under the third-party copyright acknowledgement as follows: ‘Reproduction not authorised’ or inserted at a suitably prominent place at the beginning of a publication, as shown below.

‘Reproduction of the texts of this (report, study, article, etc.) is authorised provided the source is acknowledged. Reproduction of the artistic material contained therein is prohibited’.

(Title of the material) (texts, drawings, photos, audio, video, etc.), © (name of copyright holder), (year of publication or creation)
For the reproduction or use of this material, permission must be sought directly from the copyright holder.

In any case, the originating department is responsible for ensuring that no discrepancy occurs between the rights granted by the copyright holder and the copyright notice covering its publication.

For textual material, it is advisable to add a disclaimer regarding responsibility to the copyright notice and qualification, the form and wording of which is at the discretion of the originating department and adapted to the specific case, as shown in the following examples (for the EU).

‘Responsibility for the information and views set out in this (report, study, article, publication, etc.) lies entirely with the author(s)’.

‘The content of this (report, study, article, publication, etc.) does not reflect the official opinion of the European Union. Responsibility for the information and views expressed in the (…) / (therein) lies entirely with the author(s)’.
‘The information and views set out in this (report, study, article, publication, etc.) are those of the author(s) and do not necessarily reflect the official opinion of the European Union. Neither the European Union institutions and bodies, nor any person acting on their behalf, may be held responsible for the use which may be made of the information contained therein’.
The Commission’s reuse policy, applied to its own information resources, aims at facilitating wider commercial and non-commercial reuse of information, enhancing the Commission’s image of openness and avoiding any unnecessary administrative burden for reusers and the Commission services alike. The responsibility to execute the decision on reuse is with individual DGs and services.

According to Article 2 of the decision on reuse, this decision applies to public documents produced by the Commission or by public and private entities on its behalf:

a) which have been published by the Commission or by the Publications Office on its behalf through publications, websites or dissemination tools; or

b) which have not been published for economic or other practical reasons, such as studies, reports and other data.

According to Article 3 decision on reuse:

reuse means the use of documents by persons or legal entities of documents, for commercial or non-commercial purposes other than the initial purpose for which the documents were produced.

‘Document’ means:

a) any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording);

b) any part of such content.

The decision on reuse has a broad scope of application and concerns mostly those works covered by copyright, primarily literary and artistic works. DGs and services need to apply the decision on reuse in a transparent and non-discriminatory manner without restriction of purpose whether be it commercial or non-commercial use.

According to Article 6 of the decision on reuse, although restrictions are not to be applied to reuse, certain conditions can be put in place in the form of a disclaimer or a standard open licence. Those conditions, which shall not unnecessarily restrict possibilities for reuse, may include the following:

a) the obligation for the reuser to acknowledge the source of the documents;

b) the obligation not to distort the original meaning or message of the documents;
c) the non-liability of the Commission for any consequence stemming from the reuse.

It needs to be noted that certain works may involve third-party rights and their dissemination under the decision on reuse may cause potential infringements and give rise to risk of exposure to litigation for the Commission. Therefore it is strongly advised to give due consideration to third-party rights before engaging in any act of dissemination.

According to Article 2.2, the decision on reuse shall not apply:

a) to software or to documents covered by industrial property rights such as patents, trademarks, registered designs, logos and names;

b) to documents for which the Commission is not in a position to allow their reuse in view of IP rights of third parties;

c) to documents which pursuant to the rules established in Regulation (EC) No 1049/2001, are excluded from access or only made accessible to a party under specific rules governing privileged access;

d) to confidential data, as defined in Regulation (EC) No 223/2009 of the European Parliament and of the Council;

e) to documents resulting from ongoing research projects conducted by the staff of the Commission which are not published or available in a published database and whose reuse would interfere with the validation of provisional research results or where reuse would constitute a reason to refuse registration of industrial property rights in the Commission’s favour.
6. If in doubt...

**Commission staff members:**
- contact your IP rights correspondent at [abbreviation of the DG]-IPR@ec.europa.eu, or
- the central IP service at EC-IPR@ec.europa.eu, or
- the legal service or,
- for copyright issues related to publications, the Publications Office at OP-INFO-COPYRIGHT@publications.europa.eu.

**Staff members of the other institutions, agencies and bodies:**
- contact your legal department or,
- for copyright issues related to publications, the Publications Office at OP-INFO-COPYRIGHT@publications.europa.eu.
7. Legislative background

Publications Office

- 2009/496/EC, Euratom: Decision of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions of 26 June 2009 on the organisation and operation of the Publications Office of the European Union (OJ L 168, 30.6.2009, pp. 41-47)

Reuse


International law

- Berne Convention 1886, revised in 1971 (copyright)
- Rome Convention, 1961 (related and neighbouring rights)
- World Trade Organization — WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), 1994
- World Intellectual Property Organization — WIPO Copyright Treaty (WCT), 1996

European law

- Treaty on the Functioning of the EU, Article 118
- Charter of Fundamental Rights of the European Union, Article 17, paragraph 2
7. Legislative background

- Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property

National law

- Luxembourg: Loi du 18 avril 2001 sur les droits d’auteur, les droits voisins et les bases de données
- Belgium: Loi du 30 juin 1994 relative au droit d’auteur et aux droits voisins
Interesting links

- Reuse Decision

- PubliCare – Copyright and legal aspects
  http://www.cc.cec/publications/publicare/services/copyright_en.html

- Practical Guidelines for EC staff
  http://www.cc.cec/home/dgserv/comm/helping_you_communicate/files/final_ec_copyright_guidelines_after_cis28102010.doc

- DG BUDG new standard contracts and explanatory note

- European directives
  http://ec.europa.eu/internal_market/copyright/index_en.htm

- Berne Convention, WIPO Copyright Treaty — WCT and other treaties and conventions
  http://www.wipo.int/treaties/en/

- Interinstitutional Style Guide