

Lecture 1

1. Introduction

A. Copyright is one of the three main branches of the law of Intellectual Property, along with patent law and trade mark law. The law of copyright, originally conceived to provide protection against unauthorised reproduction of books, faces unprecedented challenges from the accelerating pace of technological innovation. Since copyright gives the owner the exclusive right to authorise or prohibit certain uses of his work by others, it is central to providing right owners with some element of control over the exploitation of their works in the new global networks of the information age.

In the modern world, the law of copyright provides the legal framework not only for the protection of the traditional beneficiaries of copyright, the individual author, composer or artist, but also for the investment required for the creation of works by the major cultural industries, the publishing, film, broadcasting and recording industries, and the computer software industry.

Copyright protects a vast array of everyday items, including, for example on the private level, letters, photographs and home videos, and in business, all manner of advertisements, brochures, designs, documents, graphics, manuals and reports published or used by every firm in the country.

These implications are two fold:

- (i) There is the copyright material created every day which is the subject of protection and of potential value
- (ii) There is the copyright protected material which is made use of in some way and in which rights must be cleared.

B. Definition

Copyright is the term used to describe the bundle of rights that are granted by statute, for limited periods of time and subject to certain permitted exceptions, in respect of original literary, dramatic, musical or artistic works, such as novels, plays, poems, musical compositions, paintings, sculptures, as well as of sound recordings, films, broadcasts and typographical arrangements of published editions.

These are proprietary rights, giving the owner the right to do and to authorise other persons to do the acts restricted by the copyright law. These restricted acts include copying the work, issuing copies thereof to the public, renting or lending the work to the public, performing, showing or playing the work in public, communicating the work to the public and making an adaptation of the work or doing any of the acts restricted by copyright in relation to an adaptation. Communication to the public includes the broadcasting of the work and the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

Copyright is a property right which subsists in a number of different kinds of works, such as original literary, dramatic, musical or artistic works, sound recordings, films or broadcasts. A ``copyright work`` means any such work in which copyright subsists.

Literary, dramatic and artistic works must comply with the criterion of originality in order to be protected.

``Original`` means that the work must originate from its author and must not be copied from another work. It does not mean that the work must be the expression of original or inventive thought; the originality required relates to the expression of the thought. The standard of originality is low and depends on the author having expended sufficient independent skill, labour and judgment to justify copyright protection for the result.

Some examples of this concept can be seen as follows:

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27	28	29	30	31		

Copyright subsists in each of the above works, although they all deal with the same subject.

C. Ownership of copyright

Generally, the author, in relation to a work, means the person who creates it. In relation to a literary, dramatic, musical or artistic work, the author will be the individual who wrote the

book or play, composed the music or painted or created the artistic work. The author must be a natural person.

In the case of a sound recording, that person shall be taken to be the producer; in the case of a film, the producer and the principal director; in the case of a broadcast, the person making the broadcast or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making that other broadcast; in the case of the typographical arrangement of a published edition, the publisher.

In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom the arrangements necessary for the creation of the work are undertaken.

Thus, the author of a work is the first owner of any copyright in it. Authorship is a question of status and fact, not agreement. An agreement between parties as to who the author is, or should be, cannot therefore confer the status of authorship on someone who was not in law the author. However, in some systems (especially the Common Law system) where a literary, dramatic, musical or artistic work, or a film, is made by an employee in the course of his employment, his employer is the first owner of any copyright in the work subject to any agreement to the contrary.

A work is of “unknown authorship” if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

D. Limitations on copyright

Copyright protection is limited in duration as well as in other respects, certain exceptions being permitted to the exclusive rights it affords. The term of copyright protection in a literary, dramatic, musical or artistic work expires at the end of the period of 70 years from the end of the calendar year in which the author dies.

If the work is computer-generated copyright expires at the end of the period of 50 years from the end of the calendar year in which the work was made.

In relation to a work of joint authorship the death of the author shall be construed if the identity of all the authors is known, as a reference to the death of the last of them to die, and if the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last whose identity is known.

Other limitations on copyright protection includes numerous exceptions in favour of the general public, such as, for example, fair dealing for the purpose of research and private study, criticism, review and reporting current events and certain acts done for the purpose of instruction in educational establishments and done in libraries, etc.

E. No copyright in ideas

Copyright is a property right, but copyright law is concerned, in essence, with the negative right of preventing the copying of material. It is not concerned with the reproduction of ideas,

but with the reproduction of the form in which ideas are expressed. There is no copyright in ideas. Ideas, it has always been admitted, are free as air.

Copyright is not a monopoly, unlike patents and registered designs, which are. Thus, if it can be shown that two precisely similar works were in fact produced wholly independently of one another, there can be no infringement of copyright by one of the other. The position is that, if the idea embodied in the plaintiff's work is sufficiently general, the mere taking of that idea will not infringe. If, however, the idea is worked out in some detail in the plaintiff's work and the defendant reproduces the expression of that idea, then there may be an infringement. In such a case, it is not the idea which has been copied but its detailed expression.

Please see: *Designers Guild Ltd v Russell Williams (Textiles) Ltd*, in the House of Lords [2001] F.S.R. 11, with special emphasis on paragraphs 20 – 26 to understand the difference between ideas and expression.

F. General issues

Copyright works do not need to be registered and are automatically created when the work is created. Any original creative, intellectual or artistic expression is protected by copyright. Examples of copyright works are novels, scientific literature, theatre plays, software, photos and paintings, music, sculptures, and television broadcasts.

Copyright gives the owner of the copyright in a work of any description the exclusive right to do certain acts in relation to the copyright work. This includes the right to copy the work itself and also to issue copies of the work to the public, renting or lending copies of the work to the public, performing, showing or playing the work in public, communicating the work to the public and making an adaptation of the work. These acts are known as the acts restricted by copyright and are also often referred to as the copyright owner's economic rights.

Similarly, where more than one right owner has rights in a work, these rights subsist and may be exercised independently. For example, in relation to a sound recording, separate rights subsist with respect to:

- (i) the music and lyrics embodied in it;
- (ii) the fixation of the performances recorded on it; and
- (iii) the sound recording itself.

Someone who wishes to exploit the sound recording must, therefore, acquire or clear all these separate rights. Any unauthorised exploitation will be actionable by any individual right owner.

Copyright is thus essentially not a positive but a **NEGATIVE RIGHT**. Thus, for example, no provision of the copyright laws confers on the owner of copyright in a literary work the right

to publish it. The law gives the owner of the copyright the right to prevent others from doing that which the law recognises the owner alone has the right to do.¹

G. Subject matter of this field of law

This field of law covers copyright in the broad sense of authors' and related rights as well as certain other rights connected thereto and covers the following topics:

(i) Copyright:

(a) Authors' rights under the Berne Convention and the Universal Copyright Convention

This covers original literary, dramatic, musical and artistic work protected in accordance with the above Conventions and includes cinematographic works (films). The expression literary and artistic works is defined as follows by the Berne Convention:

The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

The above definition is not exhaustive.

Further, a member state of the Berne Convention is obliged to afford protection to the works listed but is not prevented from providing copyright protection to other works. These works are protected in most countries for 70 years from the end of the calendar year in which the author dies.

(b) Rome Convention rights

These provide protection to broadcasts and sound recordings, these rights include the protection guaranteed to producers of phonograms and broadcasters. It also covers performers rights. The period of protection of these works is generally 50 years from the end of the calendar year in which the work is made or first released to the public. A recording is released when it is first published, played or shown in public, broadcast or included in a cable programme service.

(c) Other copyrights such as typographical arrangements of published editions. Published editions are protected for a period of 25 years from the end of the calendar year in which they were first published.

¹ Ashdown v Telegraph Group Ltd (2001) EWCA Civ 1142; (2002) Ch. 149

(ii) Authors' unwaivable right to rental remuneration

A right to equitable remuneration is guaranteed to any author who transfers his rental right concerning a sound recording or a film to the producer of the sound recording or film. Thus, even when the author has assigned or otherwise transferred his rental right to such a producer, he retains the right to equitable remuneration for the rental. This right to equitable remuneration may not be assigned at all except to a collecting society. This applies in the case of an author of a literary, dramatic, musical or artistic work, and the principal director of a film. The idea behind this provision is to protect authors who are perceived as being in a weak negotiating position vis à vis producers and therefore in need of a safeguard to prevent them giving up their rights.

(iii) Moral rights of authors

Moral rights constitute certain specific rights that the author of an original literary, dramatic, musical or artistic work, and the director of a film, enjoys in his creation. Only the author personally can exercise these rights during his lifetime, since they are not assignable. Moreover, certain of these rights subsist in favour of the author, whether or not he is the owner of the copyright. These rights are distinct from the economic rights of authors and guarantee the personal connection between the author and his work. As a general rule, they continue to subsist until the copyright in the work has expired.

They include the following rights:

Right to be identified as author or director of a work.

Right to object to derogatory treatment of a work.

Right to object to false attribution of authorship or directorship.

Right to privacy of certain photographs and films.

(iv) Rights in performances

Performers and persons having recording rights have certain special rights, namely:

(a) Performers' rights in their performances

These rights are designed to protect performers against unauthorised recording or live transmission of their live performances and to guarantee them adequate control over and remuneration for the exploitation of recordings of their performances.

(b) Exclusive recording rights

These rights benefit persons entitled to the exclusion of all other persons (including the performer) to make recordings of one or more of the performances of a performer with a view to their commercial exploitation, i.e. by sale, letting for hire, or showing or playing in public. In practice, this means a producer of sound recordings, who is party to and has the benefit of

an exclusive recording contract to which the performance is subject, or to whom the benefit of such a contract has been assigned.

(v) Miscellaneous other specific rights:

(a) Devices designed to circumvent copy protection

Copies of copyright works of all kinds are now commonly made available to the public in an electronic form which is copy protected, in order to prevent and discourage unauthorised reproduction or piracy of works. Copy protection systems include technological protection devices or means intended to prevent or restrict copying of a work or to impair the quality of copies made. The law provides legal protection for technical measures used by right holders to protect their works against unauthorised reproduction and other copyright infringements. It is now an offence to deal in devices and services which circumvent effective technological measures and there exists also a civil remedy in relation to that dealing.

(b) Fraudulent reception of transmissions

It is a criminal offence to fraudulently receive a programme included in a broadcasting service provided from a place in the country with intent to avoid payment of any charge applicable to the reception of the programme. Similarly, it is an offence to make or otherwise deal in unauthorised decoders designed or adapted to enable an encrypted transmission, or any service of which it forms part, to be accessed in an intelligible form without payment of the fee charged by the person making the transmission.

(c) 25 year publication right

This right gives a person who, after the expiry of copyright protection, publishes a previously unpublished work for the first time in the European Economic Area a property right equivalent to copyright for a limited period of 25 years.

(d) The new sui generis database right

A database is a collection of independent works, data or other materials which are arranged in a systematic or methodical way, and which are individually accessible by electronic or other means. Such a database is considered to be a literary work only if it is original in the sense that, by reason of the selection or arrangement of its contents, the database constitutes the author's own intellectual creation.

There are however, many databases which do not qualify as original literary works, because they are mere compilations of data. The creation of such databases may require considerable investment and labour and therefore, deserve some degree of protection against unauthorised reproduction. This is known as the new sui generis property right in databases, which are non-original databases, but in respect of which there has been a substantial investment in obtaining, verifying or presenting the contents of the database. Now, it is an infringement of the sui generis database right to extract or reutilise without consent all or a substantial part of

the contents of the database. The right subsists for 15 years from the end of the calendar year in which the making of the database was completed.

(e) Public lending right

It is generally a scheme to provide remuneration to be paid out of the public funds to authors of books lent out to the public by local library authorities in certain EU Member States. This is not a copyright but an assignable property right for the benefit of authors of books only; no other category of author may benefit from it. Authors must be nationals or residents of a country within the EEA. The right subsists from the date of the book's first publication until 50 years from the end of the year of the author's death.

(f) Rights of confidence

Generally, he who has received information in confidence must not use it or publish it in breach of the obligation of confidence. The right to restrain the publication of a work on the ground of breach of confidence is in some ways broader than copyright, because it may protect ideas and information which copyright does not protect, thus raising questions relating to the public interest and freedom of expression.

H. Modern perception of rationale for protection

(i) Purpose of copyright and related rights

The underlying principles on which the modern international system of copyright and author's rights is founded are generally considered to be fourfold: natural law, just reward for labour, stimulus to creativity and social requirements.

According to natural law, the author has an exclusive natural right of property in the results of his labour and should have control over the publication of his work as well as the right to object to any unauthorised modification or other attack on the integrity of his work.

The principle of just reward for labour supposes that authors deserve to be remunerated when their work is exploited.

Just reward for labour in turn provides a stimulus to creativity; copyright presupposes that the guarantee of protection and the possibility of controlling and being paid for the exploitation of works encourages authors to create.

Finally, it is considered a social requirement in the public interest that authors and other rights owners should be encouraged to publish their works so as to permit the widest possible dissemination of works to the public at large.

Works protected by copyright are generally the expression of creative authorship. Copyright provides the framework required to induce authors and other right owners to create and to reward them for their work. Thus, one purpose of copyright is to encourage and reward human endeavour. It acts as an incentive also to publishers and others to invest in the dissemination and exploitation of works for the ultimate benefit of the public.

A second rationale for copyright is that stimulating creativity benefits the public. The rationale for copyright is equally valid for related rights. Thus, these rights are regarded as worthy of protection in the public interest. It follows, that, where there is a conflict between the interests of right owners in receiving adequate reward and those of the public in access to works, there is a need to balance the conflicting interests.

(ii) Balancing private and public interests

Copyright law has been adapted continually to technological advances, as new works and new uses of works have resulted from technical progress. Technical advances accelerated throughout the twentieth century and are continuing to do so. The most recent developments, combining digital and telecommunications technologies, make it possible to distribute copyright works instantaneously throughout the world and to reproduce them at will.

This makes the role of Government in balancing the need to define and guarantee the core rights of copyright owners, on the one hand, with the interest of the general public in obtaining access to works, on the other hand, correspondingly difficult.

The plethora of legislation adopted by the European Community on the subject in the past 20 years bears witness to the constant need to adapt copyright to new circumstances resulting from technical advances and to the difficulty of this process. One controversial area where it is particularly difficult to establish a proper balance is that of private use, since works are now disseminated in digital form so widely and recording techniques make high-quality copying of copyright works so easy.

I. Territoriality and enforcement of rights

(i) Territorial nature of rights

As a rule, copyright and related rights are granted with respect to a particular territory only and give protection to nationals of that territory alone: protection and the possibility of enforcing rights stops at the national borders except in so far as protection is extended outside the territory by bilateral or multinational treaties with other countries. The protection of works of foreign origin within the territory will also depend on such treaties.

(ii) Enforcement

The extent to which rights of copyright holders may be enforced abroad depends on a network of international treaties which are mentioned below. However, in recent years, the trade implications associated with the marketing of copyright goods have multiplied, mainly because the problems associated with the enforcement of intellectual property rights generally have escalated. It is estimated that a large proportion of world trade is in articles infringing intellectual property. Violations of intellectual property as a whole are estimated to have grown above 10 percent of world trade. The Organisation for Economic Co-operation and Development (OECD) published an extensive report on the subject in 2008, and concluded that the value of counterfeited and pirated goods moving through international trade alone equalled \$200 billion annually, a number they updated in 2009 to \$250 billion.

(iii) International measures

This state of affairs has led to intellectual property rights becoming an important issue in the trade negotiations of the World Trade Organisation. The Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), 1994, set minimum standards of protection of intellectual property rights generally, including copyright and related rights, and provided for improved international enforcement measures to fight against international piracy of copyright protected material. The past 20 years has also seen a great deal of activity on the international copyright front which resulted in the adoption in 1996 of the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, the aim of which is to give right owners a better level of international protection in the digital age against piracy of all kinds.

J. International standards for the protection of copyright and related rights

(i) International treaties

Towards the end of the 19th century, the expansion of international trade resulting from the industrial revolution fostered a recognition of the need for reciprocal protection of works between countries, and this led in the first place to the adoption of the Berne Convention in 1886. This Convention is based on the principle of national treatment, according to which each Member State affords the protection of its national law to nationals of the other Member States. This principle did not basically interfere with the territorial nature of copyright law.

The other major international conventions in this field, including the Universal Copyright Convention, 1952 (which provides a lower level of protection than the Berne Convention for authors), and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, 1961, (the Rome Convention) are also based on national treatment.

Other conventions such as the Convention for the Protection of Producers of Phonograms against the Unauthorised Duplication of their Phonograms, 1971, (the Phonograms Convention), the Convention relating to the Distribution of Programme-carrying Signals Transmitted by Satellite, 1974 (the Satellite Convention) and the TRIPS Agreement set minimum standards of protection for the categories of rights owner which they aim to protect.

(ii) European Union²

The establishment of the single market within the European Community has also had a considerable impact on trade in copyright goods and on the law of copyright. The attempt to harmonise national copyright and related rights laws in the European Union has led to various legislative texts being adopted. These are:

(a) Directive [2006/116/EC](#) of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (codified version).

² Please see the link:

http://europa.eu/legislation_summaries/internal_market/businesses/intellectual_property/index_en.htm

The term of protection of copyright for a literary or artistic work is set at **70 years** from:

the death of the author of the work or the death of the last surviving author in the case of a work of joint ownership;

the date on which the work was lawfully made available to the public if it is anonymous or was produced under a pseudonym.

The term of protection for a film or audiovisual work is set at 70 years after the death of the last survivor among the following: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

(b) Directive [2001/84/EC](#) of the European Parliament and of the Council of 27 September 2001 on the resale right for the benefit of the author of an original work of art.

Member States' legislation needs to be harmonised at Community level by introducing a compulsory resale right for the benefit of the author.

The resale right applies to works of graphic art or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, tapestries, ceramics, glassware and photographs, provided that:

they are made entirely by the artist; or

they are copies considered to be original works of art according to professional usage (limited productions or signed works, for example).

The resale right does not apply to original manuscripts of writers or composers.

The resale right is normally payable by the seller. Nevertheless, Member States may pass legislation permitting a professional other than the seller to be the sole person responsible for paying the resale right or to share this responsibility with the seller.

Member States may also determine that the resale right does not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed EUR 10 000.

The term of protection is provided for by Directive [93/98/EEC](#) harmonising the term of protection of copyright and certain related rights and lasts for a period of 70 years after the death of the author.

Member States are obliged to set a minimum sale price as of which sales will be subject to the resale right. This minimum sale price may not exceed EUR 3 000. Artists receive royalties calculated as a percentage of the sale price of their works. The sale price is divided into five portions and the rate of the royalty ranges from 4% to 0.25%, depending on the portion. However, the total amount of the royalty may not exceed EUR 12 500.

The resale right is enjoyed by the author of the work and, after his or her death, by those entitled under him or her.

Authors who are nationals of non-EU countries enjoy the resale right if the legislation in their country permits resale right protection in that country for authors from the Member States. However, Member States may decide to apply this Directive to authors who are nationals of non-EU countries but whose habitual residence is in the Member State concerned.

For a period of three years after the resale, the persons entitled to receive royalties have the right to demand of any art market professional any information that may be necessary to secure payment of royalties from the resale.

(c) 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 (codified version).

Member States are to provide a right to authorize or prohibit the rental and lending of originals and copies of copyright works. "Rental" means making available for use, for a limited period of time and for direct or indirect economic or commercial advantage; "lending" means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public.

The holders of the rental right and lending right are the authors, including the principal directors of films, performing artists, phonogram producers or producers of films. The transfer of the rights of performing artists appearing in films is governed by special rules.

Where an author or performing artist has transferred or assigned his rental right concerning a phonogram or an original or copy of a film, he is to retain the right to obtain an equitable remuneration for the rental. This right cannot be waived, but its administration may be entrusted to collecting societies representing authors or performing artists.

As regards rights related to copyright, Member States shall provide for performing artists, producers of phonograms and films, and broadcasting organizations exclusive rights of fixation, reproduction and distribution. Rental, lending, distribution and reproduction rights are presumed to have been assigned in certain circumstances.

Member States are to provide an exclusive right of broadcasting and communication to the public for performing artists in respect of their live performances. The broadcasting or communication to the public of a phonogram published for commercial purposes is to entitle the performing artists and producers to remuneration. Broadcasting organizations are to have an exclusive right to authorize or prohibit the rebroadcasting and communication to the public of their broadcasts where they take place in public areas and an entrance fee is paid. Member States are to provide for performing artists, phonogram producers, producers of the first fixations of films and broadcasting organizations an exclusive right to make available to the public fixations of their performances, their phonograms, the original and copies of their films and fixations of their broadcasts. This distribution right is exhausted within the Community where the first sale of these objects is made by the rightholder or with his consent.

Member States may provide for limitations to related rights in respect of private use, use of short excerpts or certain other uses.

Protection of copyright-related rights under the Directive must in no way affect the protection of copyright.

(d) Council Directive [93/83/EEC](#) of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission.

The satellite broadcasting of copyright works requires the authorisation of the rightholder. The right may be acquired from the rightholder only by agreement.

Performers are granted an exclusive right to:

broadcast live performances by satellite;

fix (record) an unfixed performance;

reproduce a fixation of a performance.

Where a phonogram is used for a satellite broadcast, an equitable remuneration is to be paid to the performers, or to the producers of phonograms, or to both. Broadcasting organizations have exclusive rights over the retransmission, fixation and reproduction of fixations of their broadcasts.

Limits may be imposed on the right to authorise or prohibit broadcasting, for example in the case of private use or the use of short excerpts in connection with the reporting of current events.

Cable retransmission of broadcasts is governed by copyright and related rights in the Member States and by agreements between copyright owners, holders of related rights and cable operators.

These rights to authorise or prohibit the cable retransmission of a broadcast are exercised through a collecting society, except where they are exercised by a broadcasting organization in respect of its own transmissions.

The Directive also lays down rules governing the impact of the new provisions on existing situations, with special reference to current contracts and arbitration systems for disputes over the cable retransmission of broadcasts.

(e) Directive [96/9/EC](#) of the European Parliament and the Council of 11 March 1996 on the legal protection of databases.

This directive applies to databases, irrespective of their form (e.g. electronic or print media). The Directive defines a database as "a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means". The Directive does not apply to the software used in the making or operation of the database or to the works and materials contained therein. Nor does it affect the legal provisions covering patents, marks, designs and models or unfair competition.

The objective of the Directive is to provide:

copyright protection for the intellectual creation involved in the selection and arrangement of materials;

sui generis protection for an investment (financial and in terms of human resources, effort and energy) in the obtaining, verification or presentation of the contents of a database.

The protection of the scheme of a database under copyright law as defined by the Agreement on TRIPS is accorded when the scheme constitutes, by virtue of the choice or arrangement of the material, an intellectual creation particular to its author. The creator of a database enjoys a group of exclusive rights (restricted acts, e.g. reproduction, alteration, distribution, etc.). The legitimate user of a database may perform all the acts referred to in point 5 that are necessary for using the database, subject to certain restrictions.

In addition to the copyright arrangements, provision has also been made for another set of *sui generis* arrangements. Thus, the creator of a database, whether a natural or legal person, can prohibit the unauthorised retrieval and/or re-use of its contents. *Sui generis* rights form pecuniary rights and as such can be transferred, assigned or granted under contractual licence. A lawful user may retrieve and re-use, without authorization, non-substantial parts of the contents of a database. However, he may not perform acts that unreasonably prejudice the legitimate interests of the maker of the database or of a person providing the works or services contained therein.

The right to prevent the unauthorised retrieval of the contents of a database extends for a period of 15 years with effect from the date on which the creation of the database was terminated.

Protection against unauthorised retrieval or re-use is accorded to databases whose maker is a national, a company or an undertaking resident in or having his/its registered office, central administration or principal place of business in the Community.

(f) European Parliament and Council Directive [98/84/EC](#) of 20 November 1998 on the legal protection of services based on, or consisting of, conditional access.

The proposal covers all services supplied on the basis of conditional access, such as pay-television and pay-radio services, on-demand video and audio services, electronic publishing and a large range of on-line services that are available to the public on a subscription or pay-per-view basis.

Each Member State is required to take the measures necessary to prohibit on its territory the following activities:

the manufacture, import, sale, renting or possession for commercial purposes of illicit devices, i.e. any equipment or software designed or adapted to give unauthorised access to a protected service;

the installation, maintenance or replacement for commercial purposes of an illicit device;

the use of commercial communications to promote illicit devices.

Each Member State is required to take the measures necessary to provide sanctions which are effective, deterrent and proportional to the potential impact of the infringing activity; and to ensure that service providers whose interests are affected by an infringing activity carried out on its territory can bring an action for damages and seek an injunction and, where appropriate, apply for the seizure of illicit devices.

(g) Directive [2009/24/EC](#) of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (Codified version).

Member States shall protect computer programs by copyright. Programs should be protected as literary works, within the meaning of the Berne Convention for the Protection of Literary and Artistic Works. Computer programs include their preparatory design material.

The protection provided for in this Directive applies to:

the expression in any form of a computer program. Ideas and principles which underlie a computer program or any elements thereof are not included in this protection;

a computer program when it is original in the sense that it is the author's own intellectual creation;

computer programs created before 1 January 1993.

The author of a computer program is the natural person or group of natural persons who has created the program or, where the legislation of the Member State permits, a legal person. If several persons participate in creating a program, the exclusive rights shall be held jointly by these persons. In the event that an employee creates a computer program following the instructions given by his employer, the employer exclusively shall have the rights in that computer program.

The holder of the rights to a computer program may do or authorise the following: the permanent or temporary reproduction of the program, or a part thereof; the translation, adaptation, arrangement and any other alteration of the program; and distribution of the programme.

A person having a right to use the computer program may make a back-up copy in so far as it is necessary for that use. This person may also observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program without the agreement of the rightholder.

The authorisation of the rightholder is not required where reproduction of the code and translation of its form are indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that the following conditions are met:

those acts are performed by the licensee or another person having a right to use a copy of a program;

the information necessary to achieve interoperability has not previously been readily available;

those acts are confined to the parts of the original program which are necessary in order to achieve interoperability.

Measures must be taken by Member States against persons committing any of the following acts:

putting into circulation an infringing copy of a computer program;

possession of a copy of a program for commercial purposes;

putting into circulation, for commercial purposes, any means the sole intended purpose of which is to facilitate the unauthorised removal or circumvention of any technical protection device.

An infringing copy of a computer program may be seized.

(h) Directive [2001/29/EC](#) of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society.

Unless otherwise provided, the Directive applies without prejudice to existing provisions relating to:

the legal protection of computer programs;

rental and lending rights and certain rights related to copyright in the field of intellectual property;

copyright and related rights applicable to broadcasting of programmes by satellite and cable retransmission;

the term of protection of copyright and certain related rights;

the legal protection of databases.

The Directive deals with three main areas: reproduction rights, the right of communication and distribution rights.

Member States are to provide for the exclusive right to authorise or prohibit direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part:

- for authors, of the original and copies of their works;
- for performers, of fixations of their performances;
- for phonogram producers, of their phonograms;
- for the producers of the first fixation of films, in respect of the original and copies of their films;
- for broadcasting organisations, of fixations of their broadcasts, whether those broadcasts are transmitted by wire or over the air, including by cable or satellite.

Member States are to provide authors with the exclusive right to authorise or prohibit any communication to the public of copies of their works, including the making available to the

public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

The same applies as regards the making available to the public of protected works in such a way that members of the public may access them from a place and at a time individually chosen by them:

- for performers, of fixations of their performances;
- for phonogram producers, of their phonograms;
- for the producers of the first fixation of films, in respect of the original and copies of their films;
- for broadcasting organisations, of fixations of their broadcasts - regardless of the method of transmission.

The Directive harmonises for authors the exclusive right of distribution to the public of their works or copies thereof. This distribution right is exhausted where the first sale or first other transfer of ownership in the Community of a copy is made by the rightholder or with his consent.

A mandatory exception to the right of reproduction is introduced in respect of certain temporary acts of reproduction which are integral to a technological process, the purpose of which is to enable the lawful use or transmission in a network between third parties by an intermediary of a work or other subject-matter and which has no separate economic significance. The Directive also makes provision for other non-mandatory exceptions to the rights of reproduction or communication. In these cases, they are accorded at national level by the Member State concerned.

The exceptions and limitations relating to the rights of reproduction and communication are optional and particularly concern the "public" domain. For three of these exceptions - reprography, private use and broadcasts made by social institutions - the rightholders are to receive fair compensation. The exceptions or limitations to distribution rights are granted depending on the exceptions relating to reproduction or communication.

The Member States are obliged to provide legal protection against the circumvention of any effective technological measures covering works or any other subject matter. This legal protection also relates to "preparatory acts" such as the manufacture, import, distribution, sale or provision of services for works with limited uses. Nevertheless, for some exceptions and limitations, in the absence of voluntary measures taken by rightholders, Member States are to ensure the implementation of an exception or limitation for those who may benefit from it. The Member States may also take such measures with regard to the exception for private use, unless reproduction for private use has already been made possible by rightholders.

Member States are to provide for legal protection against any person knowingly performing without authority any of the following acts:

the removal or alteration of any electronic rights-management information;

the distribution, broadcasting, communication or making available to the public of works or other protected subject matter from which electronic rights-management information has been removed.

K. General scheme of protection:

(Schematic diagram)

SCHEME OF PROTECTION

