Copyright: authorship rights
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01. Introduction

Internet and new technologies have revolutionised the problems of authorship rights and have reigned a theme of vital interest to many entrepreneurs.

In this report we will clarify a few of the concepts of authorship rights and intellectual property in general, with special reference to legislation and computer program protection systems. We will also summarise the terminology used in the field in a brief conceptual dictionary about the subject.
02. Intellectual property rights: patents, trademarks, authorship rights, registered designs and confidential information.

Discussions of intellectual property often refer to intellectual property itself – that which is protected by authorship rights – but also about industrial property, which is protected by patents, trademarks, designs and other similar methods. There are, however, considerable differences between them.

The protection of industrial property rights refers to inventions (patents), industrial designs, distinctive signs of products and services (trademarks) and others which the legal system specifically protects by means of a variety of regulations that can be consulted on the website of the Oficina Española de Patentes y Marcas (Spanish Office of Patents and Trademarks): http://www.oepm.es/es/index.html.

Intellectual property rights are those which the legal system grants to a natural person or legal entity for the fact of authorship of a literary, artistic or (scientific) research work, and which concede to that person exclusive ownership of their creation as well as the exclusive ability to decide how their creative work should be divulged, disseminated or exploited. It is these rights that we will deal with in this report.
03. Copyright: authorship rights

Protection of intellectual property rights is independent of their registration. Registration is a means of proof if there are disputes about the authorship of a work.

Spanish legislation grants the rights of intellectual property to the author for the sole fact of the creation of a literary, artistic or research work. Protection of intellectual property rights is therefore independent of any registration. By the sole fact of creation, the author is already the holder of the moral and economic rights inherent in intellectual property.

Registration of a work, however, is a valid means of proof to establish who the author of the registered work is and who has the rights of economic exploitation to it. Registration also serves to advertise this authorship, insofar as anyone is able to consult registry books to find out about registered works, authors and rights holders.

The author of any kind of work, whether created by themselves or by a third party who transfers the rights to them in the way established by law or who possesses it due to having commissioned the protected work, holds the following intellectual property rights:

- Moral rights, such as the ability to decide whether the work is to be divulged or not, the requirement of respect for the integrity of the work, etc.
- Property rights, which entitle the author to a reasonable remuneration for the use other people make of their work and which include:
  › Rights of exploitation, reproduction, distribution, public communication and transformation.
  › Rights to remuneration for use of the work by third parties.

Moral rights are inalienable on the part of the author whereas property rights can be transferred to third parties.

The Spanish legal system establishes limitations on authorship rights. The protected work can be used, with the evaluations established by current intellectual property legislation, to:

- Make temporary reproductions and private copies.
- Use in the form of quotation and illustration for educational purposes.
- Create works and articles on topical themes.
- Take all the necessary actions to access the contents of a database and its normal use by users.
- Reproduce works that contain topical information.
- Reproduce works which are permanently located in public spaces (parks, streets, squares, etc.).
- Reproduce and temporarily lend works to certain institutions such as libraries, sound archives, newspaper libraries and similar establishments.
- Perform musical works in official acts and religious ceremonies with free admission.
- Parody the divulged work.
- Exercise guardianship of the right of access to culture once the author of the work has died.
- Authorship rights are considered movable property and can therefore be transferred, given, sold, inherited, etc., and can be considered as assets.

Differences between authorship rights and copyright: it is commonly believed that authorship rights and copyright are the same, but they are in fact two concepts that are based on different theoretical foundations, even though they are not mutually exclusive.

1. Unlike authorship rights, which recognise the creator of the work, copyright appears in practice once the work is published. In essence, this "right to copy" includes the assets in the former concept. This shows the first difference: this concept is limited to the work itself and does not include its creator as authorship rights does; it might be said that copyright is one of the components of the latter.

2. Copyright is an expression that comes from common law (it is generally used in the UK, Commonwealth countries and the United States) and relies primarily on case law (judicial interpretations of legal rules that can become sources of law) rather than on laws.

By contrast authorship rights come from European continental law which is based on laws rather than on case law.

3. While authorship rights argue that the creator has a natural right to their work, copyright says there is negotiation between the author and society through the work in which both sides seek a higher good. The best example is U.S. copyright (this distinction is due to the fact that the laws of each country may contain variations in the rules that make up copyright), which says that society grants to the author the handling and disposal of the fruits of their labour but only on a temporary and limited basis.

4. Since copyright only covers the property rights of a work, i.e. purely economic rights, it is therefore seen as a consumer product, and as such whoever is its owner may transfer possession to another through sale, inheritance, gift or any other form of transfer. The moral right (as explained above) characteristic of authorship rights prevents this from happening.
04. The protection of software as Intellectual Property

The Spanish legal system maintains that software is intellectual property subject to authorship rights, as specified in Article 10 of the Intellectual Property Law.

Title VII of the Law is entirely devoted to the protection of computer programs, defined in article 96 as “any sequence of instructions or indications intended to be used, directly or indirectly, in a computer system in order to carry out a function or task or to obtain a particular result, whatever its expression or fixation, [and] its preparatory documentation. Technical documentation and user manuals of a program will enjoy the same protection afforded by this Title to computer programs.”

This notwithstanding, the owner of software can apply for a patent for the machine on which the software is to be used which will allow them to use it exclusively during a certain period of time.

The authorship rights to software prevent third parties from copying the protected work but do not prevent them obtaining an identical or “substantially similar” result independently (which they can prove) and commercialising it.

The protection of software by means of a patent is much more costly than the protection of intellectual property. A European patent, for example, costs around €10,000.

In addition, a Spanish patent lasts for twenty years with renewal fees to be paid annually from the fifth year from when it was applied for. The protection of authorship rights, on the other hand, lasts for the entire life of the author and for seventy years after their death (during which the rights are held by their heirs) or for seventy years after the 1 January following the date of publication of the work (when the authorship rights are held by a company).

It takes at least 30 days to process a patent.
05. Brief conceptual dictionary of Intellectual Property

**Copyright:** symbol stating the identity of the holder or assignee of the exclusive rights of exploitation of a work. As well as the identity of the person, it is necessary to indicate the place and date of divulging of the work. No administrative procedure is required to use the symbol and anyone using it does so under their own responsibility.

**Copyleft:** term coined by the Free Software Foundation (http://www.gnu.org/) to designate the system of “authorship rights” used for the GNU free software project. Copyleft indicates that neither the copying nor the use of the work is restricted, but rather that it is permitted without reservation. It also indicates that the documents and programs derived from a copyleft work must be of free use, without reservation of any kind. Over the last few years this system of authorship rights has been expanded to include any form of creation through Creative Commons.

**Creative Commons:** (http://cat.creativecommons.org/). Creative Commons licences are seen more as “standard form licences” which are akin to a legal notice due to their generic nature as the other party to the contract is not specified. Creative Commons licences show how the author will allow other users to use the author’s work and not the uses they will make of their work. These licences are focused exclusively on the rights of exploitation of a work (reproduction, distribution, public communication) without affecting in any way the exercise of other rights granted by law such as moral rights (rights of authorship attribution, disclosure, modification, integrity, etc.), user rights (rights of private copy, quoting, parody, etc.) or other image or privacy rights.

**Legal deposit:** instrument to provide knowledge about the printing production of a country and keep a national archive of printed and recorded works. It consists of an obligation on publishers and producers to deposit a specific number of copies with the government.

**Management entities:** non-profit organisations that manage the exploitation rights of intellectual property on behalf of its owners. Authors can contact them to have their rights managed. Currently the Ministry of Culture has approved eight management entities: SGAE (Societat General d’Autors i Editors), CEDRE (Centre Espanyol de Drets Reprogràfics), VEGAP (Visual Entitat de Gestió d’Artistes Plàstics), DAMA (Drets d’Autor de Mitjans Audiovisuals), AIE (Artistes Intèrprets o Executants, societat de gestió d’Espanya), AISGE (Artistes Intèrprets, Societat de Gestió), AGEDI (Associació de Gestió de Drets Intel.lectuals) and EGEDA (Entitat de Gestió de Drets de Productors Audiovisuals).

**ISBN (International Standard Book Number):** international numerical code which publishers can use in books and pamphlets with the aim of simplifying statistical and commercial operations between bookshops and publishers.

**Intellectual Property Register:** voluntary instrument for the protection of authors and rights holders.
06. More information

- Intellectual Property Register:
  http://www.mcu.es/propiedadInt/CE/RegistroPropiedad/RegistroPropiedad.html
- Creative Commons Register:
  http://cat.creativecommons.org

Written by the Barcelona Activa team using the following sources of information:

- Free Software Foundation. "¿Qué es el copyleft?":
  http://www.gnu.org/copyleft/copyleft.es.html
- Royal Legislative Decree 1/1996, of 12 April, enacting the consolidated text of the Intellectual Property Law to regularise, clarify and harmonise existing legal regulations in this area:
  http://www.mcu.es/propiedadInt/index.html
- Softcatalà. "Llicència de documentació lliure de GNU":
  http://www.softcatala.org
- Wikipedia. "Copyleft":
  http://ca.wikipedia.org/wiki/Copyleft
- Wikipedia. "Drets d’autor":
  http://ca.wikipedia.org/wiki/Drets_d%27autor


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