

Copyright Law and Technological Change

Assoc Prof Raimonda Bublienė (VGTU)
raimonda.bubliene@vilniustech.lt

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Copyright Law Background

- ❑ Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (Section 2 of the article 27 of The Universal Declaration of Human Rights).
- ❑ The law shall protect and defend the spiritual and material interests of an author that are related to scientific, technical, cultural, and artistic work (Section 3 of the article 42 of the Constitution of the Republic of Lithuania).



Copyright Law and Intellectual Property

- ❑ Copyright law is the part of intellectual property law.
- ❑ Intellectual property includes copyright, inventions, related rights, trademarks, design and others.
- ❑ All objects of intellectual property have two common features:
 - they always are immaterial;
 - they are property.

Concept of the Copyright Law

- ❑ The copyright law is the part of the intellectual property law, rules of which regulate realization and defense of the interests related to creation and usage of the works of science, art or literature.
- ❑ These rights have common features as follows:
 - The subject-matter of these rights are being protected from the moment of creation of them;
 - The copyrightable works must have objective form of expression but not necessarily in material form;
 - The rights have limits in time;
 - The rights have territorial effect;
 - The implementation and defense of these rights are embodied through granting of the exclusive rights to use the subject-matter of the copyright but not through absolute monopoly over them.

Features of Copyrightable Works

□ Copyrightable works are:

- the result of creative activities related with the literature, science and art;
- the original result of intellectual job;
- expressed in objective form;
- copyrightable whatever their artistic value.



Special Sources of Copyright Law:

- International treaties;
- Law of European Union;
- National legal acts.



International Treaties (I)

- ❑ Berne Convention for the Protection of Literary and Artistic Works (1886). Its main provisions:
 - Authors shall enjoy, in respect of works for which they are protected under this Convention, in countries of the Union other than the country of origin, the rights which their respective laws do now or may hereafter grant to their nationals, as well as the rights specially granted by this Convention (part 1 of the Article 5);
 - The enjoyment and the exercise of the rights shall not be subject to any formality (part 2 of the Article 5).
 - The enjoyment and the exercise of the rights shall be independent of the existence of protection in the country of origin of the work (part 1 of the Article 5).



International Treaties (II)

□ The WIPO Copyright Treaty (WCT)

- Special agreement under the Berne Convention which deals with the protection of works and the rights of their authors in the digital environment. In addition to the rights recognized by the Berne Convention, they are granted certain economic rights.
- The Treaty also deals with two subject matters to be protected by copyright:
 - (i) computer programs, whatever the mode or form of their expression;
 - (ii) compilations of data or other material ("databases").

International Treaties (III)

- ❑ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961). Its main provisions:
 - The Convention implements the protection for performers, producers of phonograms and for broadcasting organizations;
 - The Convention implements the principle of “national treatment”;
 - The Convention provides the minimum standards of protection of the related rights;
 - The Convention minimizes the formalities for protection of the related rights.

International Treaties (IV)

- ❑ Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) (the TRIPS Agreement). Its main provisions:
 - The Agreement regulates both copyrights and related rights;
 - The Agreement provides for the national treatment principle;
 - The Agreement provides for the most-favoured-nation treatment principle;
 - The Agreement implements protection for computer programs as well as for producers thereof.

Law of European Union

- ❑ Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs;
- ❑ Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases;
- ❑ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC;
- ❑ 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



Legal Acts of the Republic of Lithuania

- ❑ Law on Copyrights and Related Rights of the Republic of Lithuania (1999). Its main provisions:
 - The law is designed to regulate three groups of intellectual property rights: copyright, related rights, and rights of the makers of databases;
 - The law implements collective administration of the copyrights and related rights;
 - The law provides the means of enforcement and protection of the copyrights, related rights and rights of the makers of databases.



Types of Authors' Rights

- ❑ The main objective of copyright law – to protect creators' individual interests by providing them with legal means to control usage of their works.
- ❑ Such interest are of different content. There are interests which have economic content and there are interests, content of which is related to protection of author's personality.
- ❑ Subject to the content of the interests to be protected, there are distinguished:
 - economic rights (reproduction, publication, translation of a work, adaptation, arrangement, dramatization or other transformation of a work, distribution of the original or copies to the public, public display, public performance, broadcasting, retransmission, communication to the public including the making available to the public of a work over computer networks (on the Internet).
 - moral rights (the right of authorship; the right to the author's name; the right to the inviolability of work).

Limitation on Economic Rights (I)

- ❑ Laws provide for possibilities to use works without consent of authors (or other holders of economic rights). Those certain possibilities are called limitations on economic rights.
- Any limitations on economic rights shall be permitted exclusively to the cases provided for in the law;
- Limitations must not conflict with a normal exploitation of a work;
- Limitations must not prejudice the legitimate interests of author or other owner of copyright.

Limitation on Economic Rights (II)

- ❑ Limitations, related to public demands in the fields of education, information and culture
 - It shall be permissible, without the authorization of the author or any other owner of copyright, to reproduce a relatively short passage of a published work or a work made available to the public, both in the original and translated language, in the form of a quotation in another work, provided that such reproduction is compatible with fair practice and its extent does not exceed that justified by the purpose.
 - It shall be permitted, without the authorization of the author of a work or any other owner of copyright in this work, and without the payment of a remuneration, but mentioning, when possible, the source and the name of the author to reproduce for non-commercial teaching and scientific research purposes of short published works or a short extract thereof, provided that this is related to study programs and does not exceed the extent justified by the purpose, as well as of the works kept in publicly accessible libraries, educational establishments, museums or archives

Limitation on Economic Rights (III)

- Limitations, related to business demands of information technologies
 - It is permitted to carry out without the authorization of holder of copyright the reproduction and communication to the public of a work in connection with the demonstration or repair of equipment.
 - It is permitted without the authorization of a holder of copyright to reproduce or adapt computer programs on certain conditions.
 - It is permitted without the authorization of a holder of copyright to reproduce the code of a computer program on certain conditions.

Concept of Databases

- ❑ Database means a compilation of works, data or any other material arranged in a systematic or methodical way and individually accessible by electronic or other means, except for computer programs used in the making or operation of such databases.
- ❑ Rights of makers of databases also are called sui generis right.
- ❑ A database may be protected as a work under copyright and (or) as a database itself under sui generis right.

The Criteria for Protection of Sui Generis Rights

- ❑ A person may become an owner of sui generis rights first of all if he/she/it by selecting, arranging, verifying and presenting the contents of the database, has made substantial qualitative and (or) quantitative (intellectual, financial, organizational) investments.
- ❑ A person may gain sui generis rights only if he/she/it shows that he/she/it has made substantial qualitative and/or quantitative investment in creating of a database.

Topics for Discussion

- Illegal download of music or movie is just as bad as stealing them from a store?
- Why has a technological change cause problem for intellectual property law?
- Why are developed countries more likely than developing ones to sign international intellectual property agreements?

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