

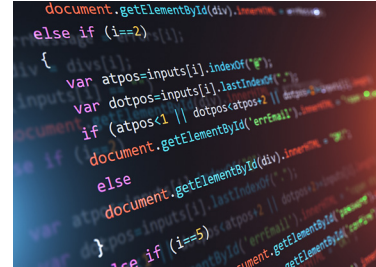
INTELLECTUAL
PROPERTY RIGHTS
IN A NUTSHELL

Copyright

01. What does copyright protect?

Copyright protects “**(literary and artistic) works**” (see further).

Contrary to popular belief copyright protects much more than what traditionally has been referred to as “artistic creations”. Copyright can protect many creations, ranging from classical artistic works (paintings, books, musicals works, etc.) to works of applied art (bags, tables, clothing, etc.) to works with a technical aspect such as computer programmes, technical drawings and databases.



02. What are the requirements for copyright protection?

For there to be a ‘work’ – and thus for there to be copyright protection – **two cumulative conditions** must be met:

- Firstly, there must be an **expression**. The creation, therefore, must go beyond a mere idea, discovery, or concept as well as beyond a mere “*style, genre or technique*”. The object must be concrete. Only if the idea is expressed in a certain form, copyright protection will arise. If the idea remains an idea, no protection will be possible.
- In addition, the creation must be **original**. There will be originality when the work is the author’s own intellectual creation. In other words, the work must reflect the personality of the author and result from his free and creative choices.

Whether these conditions are met is a factual assessment to be made by the court. Were for example considered to be **copyright protected** by the **Belgian courts**¹⁶:



¹⁶ Respectively Mons Court of Appeal, 15 December 2020, 2019/RG/747, unpublished; Brussels Court of Appeal, 26 July 2018, 2017/AR/2068, available on darts-ip; Dutch-speaking Commercial Court of Brussels, 23 December 2021, A/20/04335, unpublished. | Photo of dresser: <https://www.maisonsdumonde.com/>

Were for example considered **not** to be **copyright protected** by the Belgian courts¹⁷:



03. How can you obtain copyright protection?

Copyright comes into existence **automatically** as soon as there is an (expressed, original) 'work'. **No administrative formality** (registration) is required nor is any marking such as © mandatory. There is also no obligation to mention the date of creation or the name of the author.

It is however often difficult to prove to third parties **when** a work was created, why it is **original** and who the **author** is.

Tip: We therefore highly recommend documenting your creation process and keeping (dated) evidence that demonstrates your creation of the work (possibly through I-Depot¹⁸, see further)

Copyright protection is enjoyed up to **70 years after the author's death**.

Tip: It is thus important to keep track of who the original author is (e.g. in case the copyright is transferred)

¹⁷ Respectively Brussels Court of Appeal, 5 September 2017, 2015/AR/268, available on darts-ip; Brussels Court of Appeal, 6 december 2011, 2010/AR/2730, available on darts-ip.

¹⁸ https://www.boip.int/nl/ondernemers/ideeen?gclid=CjwKCAjwjtOTBhAvEiwASG4bCD-4Qb1OiSr3XjbtZvKv2zqwCA_0oKFUbKz-cX7VUMD5PD-Y-H_kY0hoCVLcQAvD_BwE

04. What rights do you have as a copyright holder?

The **copyright holder** is the author or the one who has obtained the copyright by, for example, transfer:

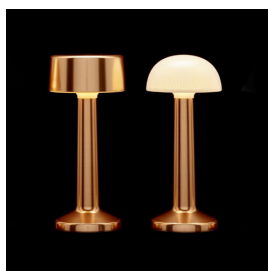
- The **author** is in most jurisdictions the natural person that has created the work.
- A company or legal person cannot be the “author” of a work, but can obtain the copyright by, for example, transfer from the author to that company or legal person (by law or by contract). There is however a **presumption of authorship** when the **name of the company** is **mentioned** on the work. This presumption is nevertheless refutable.

The **copyright holder** has certain **economic rights** that allow him to exploit the work. There are two main economic rights: **the right to reproduce a work** (materially e.g. a DVD with music) and **the right to communicate a work** to the public (immaterially e.g. listening to music through radio or TV). The right to reproduce encompasses other sub-rights such as the right to adapt, distribute and translate the work.

The copyright holder may thus prevent any third party from exercising one of the abovementioned exclusive rights without his permission.

An unauthorised reproduction exists when the whole or a part of the original work is copied or reproduced. This is a factual assessment to be made by the court and Belgian case law is therefore very diverse.

Example – copyright infringement



Left: Copyright protected work¹⁹



Example – no copyright infringement



Left: Copyright protected work²⁰



Left: Copyright protected work²¹



In addition, the author has certain personal **moral rights**:

- **paternity right**: the author has the right to claim the paternity of his work and have his name mentioned on his work if he so wishes.
- **right of divulgation**: the author has the right to decide whether or not to make his work public. However, once the author has made the work public, he can, of course, not go back.
- **right of integrity**: the author has the right to object to any modification, as well as any distortion, mutilation or other alteration that affects the integrity of his work.

These rights are inalienable and cannot be transferred.

19 Brussels Court of Appeal, 6 November 2018, 2017/AR/240, available on darts-ip.

20 Commercial Court of Antwerp, 4 July 2019, A/18/7799, available on darts-ip.

21 Antwerp Court of Appeal, 24 March 2021, 2018/AR/2178, available on darts-ip.

05. Copyright protection of computer programs

Computer programs (e.g. software, website code, smartphone application, etc.) may be considered as “**literary works**” and **can therefore be protected by copyright**. There are **some special rules in Belgian law** specifically concerning copyright in computer programs, but everything that is not expressly regulated otherwise falls under the general provisions of copyright law.



Indeed, as with other works that are protected by copyright, the computer program needs to be “**original**” – i.e. the result of free and creative choices of the author.

In addition, **only the “expression”** of the computer program is protected. This primarily concerns the source and object codes:

- The **source code** is written in a programming language and is a readable version of the computer program for a programmer. For the computer program to work, the source code must be interpreted by the concerned machine and therefore the programming language must be compatible with the object code.
- The **object code** is not understandable for humans, as it is written in binary code. It is the machine language in which instructions are written that the computer's processor can execute.

The **preparatory material** for the creation of the computer program can also be protected, provided that the material can lead to the composition of the computer program in question without any further steps being necessary (e.g. **functional or technical designs of the computer program**).

Ideas and principles underlying the computer program and **interfaces** are explicitly **excluded** from copyright protection. Thus, programming languages per se cannot be copyright protected.

The **holder** of a copyright protected computer program also has a number of **specific economic rights** (such as the right to authorise the permanent or temporary reproduction of part or all of a computer program) and the author in addition also has a few personal **moral rights**.

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