

GUIDELINES FOR THE CUSTOMIZATION OF  
CREATIVE EXPRESSION - AN INTRODUCTION TO COPYRIGHT AND  
RELATED RIGHTS FOR  
SMALL AND MEDIUM-SIZED ENTERPRISES

Overall objective

- The main objective of customizing the guide is to make it suitable for providing specific guidance to SMEs based on **national** copyright and/or related legislation, regulations, practices, forms, fees, institutions, case law, court decisions, and the specific administrative procedures, if any, available in each country.
- While doing so, it is important to include **illustrations, examples and case studies** from the country for which the guide is being customized. **Authorization** for the images included in the international edition of the guide have only been granted for that specific edition. Therefore, customized guides should include different examples and images or, if the same images are included, authorization should be requested directly to the relevant companies/copyright owners.
- Customized versions of the guide should nevertheless point out any major **differences in copyright regimes of other countries**, so as to guide SMEs that may be active abroad.

General remarks

- The words “your national copyright office” should be replaced every time they appear with the actual name of the copyright office your country concerned.
- The words “your country” should be replaced every time they appear with the name of the country.
- The words “related rights” should be replaced every time they appear with “neighboring rights” or any other term if that is the correct wording in your country.
- Common law countries should use “fair use” or “fair dealing”, depending on which is the correct term in the country. Other countries should use the wording “limitations or exceptions included in the national copyright or related rights law”.
- Sections of text which do not apply to the domestic situation should not be omitted, as they serve to call attention to existing differences in national copyright regimes. However, they may be shortened, if need be.
- Any details or particularities of your national law, relevant for business managers and entrepreneurs, that are not captured by the current international version of the guide, should be added in the customized version.

## SECTION 1: COPYRIGHT AND RELATED RIGHTS

### What is a Copyright?

- Provide details on the national copyright legislation. This could be added at the beginning or the end of this section.

### Box: Copyright and Business

- Does your national copyright law protect sketches, drawings or designs of manufactured products? Adapt or delete the last sentence of the box accordingly.

### What are related rights?

- State whether in your country related rights are simply incorporated under the copyright legislation, or if they are protected under a separate category. If your country has separate legislation concerning related rights, provide details of the applicable law(s).
- For “rights of performers”, “rights of producers of sound recordings” and “rights of broadcasting organizations” a definition that better reflects the national definition may be used.

### Box: Example

- Use the example of an existing song in your country.

### How are copyright and related rights relevant to your business?

- **Take action against infringers:** Does your country have criminal penalties for willful copyright violators? If so, make reference to this.
- **Use works owned by others:** Does one need to obtain prior permission for using music in a restaurant, bar, retail shop, etc. in your country? If so, make reference to this.

### How are copyright and related rights obtained?

- State the international copyright treaties to which your country is a member.
- Confirm that a work is protected without any formalities or requirement of registration in your country. Does your country have a copyright office or a related institution that provides for voluntary deposit and/or registration of some kinds of works? If so, the website address of that institution could be mentioned, and/or reference could be made to page 24 for more information.

### Are there other legal means for protecting your original creations?

- Adapt this entire section according to the relevant national legislation in your country.
- **Trademarks:** Include the website address of the institution in charge of registering trademarks.

- **Industrial designs:** Replace with “design patents”, “industrial designs and models” or whatever else is the correct wording in your country. Include the website address of the institution in charge of registering industrial designs. If unregistered designs are also protected in your country, provide relevant information.
- **Confidential business information:** Is there legislation for the protection of confidential information or trade secrets in your country? What are the main criteria for confidential business information to benefit from such protection?
- **Unfair competition:** How is unfair competitive behavior dealt with in your country? Is there legislation/case law on tort or unfair competition?

## SECTION 2: SCOPE AND OF PROTECTION

### What categories or type of works are protected by copyright?

- If the copyright legislation of your country provides a more detailed list of works, this should be mentioned. Adapt the provided list of types of works according to the legislation in your country. Delete or add other types of works, as the case may be.

### Box: Protection of Computer Programs and Software

- Check this box with reference to your national legislation, court decisions and practices.
- **Copyright:** Is computer software protected under copyright law? Are the source and the object code protected by copyright?
- **Patents:** Are computer programs protectable by patents in your country? Are there any specific conditions? Or, are computer programs *per se* expressly excluded as unpatentable subject matter? Is there a distinction (in terms of their patentability) between computer programs and computer-implemented inventions?
- **Industrial designs:** Can graphic user interfaces (GUI) or the icons on a computer monitor be registered as an industrial design in your country?
- **Criminal law:** Does your country have any other legislation(s) which provide(s) for criminal liability for software-related acts? (*Such as the Digital Millennium Copyright Act (DMCA) in the United States*)

### Box: Protection of Databases

- Check this box with reference to your national legislation, court decisions and practices.
- Does your country have a *sui generis* system for the protection of non-original databases?

What criteria must a work meet to qualify for protection?

- State the main requirements for copyright protection in your country. Originality? Creativity? Fixation? Using a copyright notice? Explain these requirements in accordance with your national legislation.

What aspects of a work are not protected by copyright?

- **Names, titles, slogans and short phrases:** Does your country grant copyright protection to such items? If so, what are the requirements? Similarly, does your country protect simple product lettering or coloring, or the mere listing of product ingredients or contents?
- **Official government works:** Are such works excluded from copyright protection?
- **Works of applied art:** If needed, replace the words “works of applied art” with “useful articles” or any other terminology which is applicable in your country. Is copyright protection available for such items in your country? If so, what features are protected? If not, can works of applied art be protected as an industrial design in your country?
- State any other aspects that are explicitly excluded from copyright protection in your country. (*For example, news events, plots or characters, listings of ingredients or contents, standard calendars, etc.*)

Box: Works of Applied Art – Overlap between Copyright and Design Rights

- Use the appropriate term (“works of applied art”, “useful articles” or other).
- Modify to reflect national legislation. How is the overlap between industrial designs and copyright protection regulated in your country? Is dual protection possible? What is the extent of the overlap of such dual protection? Are there exceptions? Is there mutual exclusivity? It is important, however, to point out that the situation may be very different in other countries.

What rights does copyright protection provide?

- State any details or particularities of your national legislation that are not captured by the international text of the guide.

What are economic rights?

- State the economic rights that are granted in your country to copyright owners, and explain their scope. Does your national law(s) provide any economic rights other than those listed in the guide (*for example the “publication right”*)?

What are moral rights?

- State the different types of moral rights that are granted in your country to some or all copyright creators, and explain their scope. Are there any types of moral rights in your national legislation(s) other than those listed in the guide?

- Are there types of works or situations in which moral rights do not apply in your country? (*For example, computer programs; where material is used in newspapers or magazines; where ownership of a work originally vests with the author's employer, etc.*)
- Can an author transfer or waive his/her moral rights in your country? If so, what are the requirements for such transfer or waiver?
- Does your country provide moral rights for performers? Who gets these rights? If so, list the different types of moral rights and explain the scope of the rights; Is there any distinction in the application of moral rights between different types of performers (e.g., actors, musicians, dancers, etc.,)?

What rights do “related rights” provide?

- **Performers:** State the type of related rights that are granted to performers in your country, and explain the scope of the rights.
  - Do performers have a rental and/or lending right in respect of recordings of their performances? Is there a compulsory license scheme in operation?
  - Is there any legislation and/or court rulings in your country with respect to bootleg recordings (*i.e., an audio and/or video recording of a performance that was not officially released by the performing artist*)?
  - Are the rights of performers administered by a collective management organization (CMO) in your country? If so, mention the name of the CMO and refer to page 42.
- **Producers of phonograms:** State the type of related rights that are granted to phonogram producers in your country, and explain the scope of the rights.
  - Do they have a rental and/or lending right in respect of their phonograms? Is there a compulsory license scheme in operation?
  - When a phonogram is broadcast, how is the remuneration regulated in your country: is it an equitable fee for the license agreed between phonogram producers and broadcasters; or is it imposed by law?
  - Are the rights of producers of phonograms administered by a CMO in your country? If so, mention the name of the CMO and refer to page 42.
- **Broadcasters:** State the type of related rights that are granted to broadcasters in your country, and explain the scope of the rights.
  - Are broadcasters in your country able to prohibit acts like redistribution or sale of broadcasts? If so, explain the nature and scope of the rights.
  - Do broadcasters in your country have the ‘making available right’ (*i.e., an exclusive right to authorize or prohibit making available to the public of fixations of their broadcasts, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them*)? If so, explain the scope and nature of rights.
  - Do broadcaster have any rights with respect to signals distributed over the Internet (*whether in the form of protection for netcasting or any other form*)?
  - Does your country provide copyright-like rights to cable castes, podcasters, webcasters, etc.,
  - Are the rights of broadcasters administered by a CMO in your country? If so, mention the name of the CMO and refer to page 42.

- Does your country have related rights for categories of people other than those listed in the guide (performers, producers of phonograms and broadcasters)? If so, mention and explain briefly. (*For example, in the European Union, the rights of film producers (as opposed to directors) and database creators are also protected by related rights*)

Box: Rights of Record Manufacturers

- Can record manufacturers prohibit broadcasting of their recordings in your country? If not, then do they have the right to receive a royalty from broadcasters for the broadcast of their recordings? If yes, are the rates of such royalties negotiated between the parties, or are they fixed by or under a legislation? Amend the text accordingly.

Box: Copyright and Related Rights for Music

- This box should give an overview of the different rights that often arise in transactions involving music. Explain what the different terms (music publishing rights, public performance right, mechanical right, synchronization right, master recording) encompass in your country. Name relevant CMOs, if any.

How long do copyright and related rights protections last?

- What is the exact duration for protection of economic rights and moral rights of different types of works/rights in your country?

### SECTION 3: PROTECTING YOUR ORIGINAL CREATIONS

What do you have to do to obtain copyright or related rights protection?

- The text included in the international edition of the guide assumes that copyright protection is automatic (without registration). If fixation is a requirement in your country, reference to this should be made. If there is a definition of the term “fixation”, then please include it here.

How do you prove that you are the owner of copyright?

- **Copyright office:** Does your country have a copyright office that provides for voluntary deposit and/or registration of works?
  - If so, provide practical information on the registration procedure, such as the website address of the copyright office; time to get registration; registration fees; formalities; specific procedures, for example for websites; etc.
  - Is registration required to institute an infringement suit; to obtain “statutory damages” or “legal costs and attorneys’ fees”; for official recognition of ownership, etc.? If so, this should be mentioned.
- **Bank or lawyer:** Is this practice accepted as a valid evidence in a court?

How do you protect your works in electronic or digital form?

- This section may not need any customization.

Box: Choosing the Right DRM Tools

- This section may not need any customization.

Box: Use Care When it Comes to TPMs

- State whether circumvention of TPMs is an action that is prohibited by copyright or another legislation in your country? Is it illegal to knowingly alter, remove, or falsify copyright management information? What are the penalties for such violations?

What protection do you have abroad?

- If your country is a member of the Berne Convention, please state it here.

Is a copyright notice on the work obligatory?

- First paragraph: *Cambodia, Iran, Iraq, Mozambique and Sierra Leone*: State whether your country denies protection if the copyright notice does not appear on copies of published works. *Other countries*: State that a copyright notice is not required for protection in your country.
- Second paragraph: Does a copyright notice prevent a party from claiming the status of "innocent infringer"? If so, explain.
- Third paragraph: If it is advisable in your country to add the words "All rights reserved", state so.
- Last paragraph: Is it required to affix a phonograms notice to obtain protection of sound recordings that are published in your country? Are there any specific requirements as to the form of the notice?

Box: Copyright Protection for Websites

- This text may not need any customization.

## SECTION 4: OWNERSHIP OF COPYRIGHT

Is the author always the owner of a copyright work?

- Enumerate the circumstances in which the creator of a work is not automatically the copyright owner. Explain whether contractual agreements may alter or clarify the general results established by law in respect of copyright ownership.

Who owns the moral rights?

- Can moral rights be transferred or waived in your country? Are there any specific requirements or limitation for such a waiver?

Who owns the copyright in works created by an employee?

- Adapt according to the legislation of your country. What is the situation in your country with works created by employees? Are such works automatically assigned to the employer? Does your legislation have “works for hire” provision? What rights does the author/employee have? Is he entitled under a national legislation to receive financial benefits/rewards for the work he created? What happens when copyright works are created/developed outside working hours? Are there any specific categories of employees where these rules do not apply (*for example, university employees, employees of newspapers/magazines, etc*)?

Who owns the copyright in commissioned works?

- Adapt according to the legislation of your country. What is the general rule in your country for commissioned works? Are there any exceptions to this general rule (*for example, for commissioned photographs, portraits or engravings, or for freelance journalists*)?

Box: Works Created for Governments

- What is the situation of works created by employees or independent contractors for the government? Is such a work provided copyright protection at all? Who owns the copyright in such works?

Box: Works for Hire

- *Countries that have “works for hire”*: The content of this box may be included under the section “Who owns the copyright in works created by an employee?”.
- *Other countries*: This text does not need any customization.

Who owns the copyright in works created by several authors?

- Amend, where necessary, the text according to the legislation of your country.

## SECTION 5: BENEFITING FROM COPYRIGHT AND RELATED RIGHTS

How can you generate income from creative works?

- This section may not need any customization.

If you sell your work, do you lose copyright over it?

- Is there a clearly spelt out legal regime of “exhaustion” of copyright/related rights in your country? Is this exhaustion on a national, regional or international level? What rights are exhausted? Is the exhaustion regime different for different categories of work? If national legislation does not provide for exhaustion of copyright/related rights, reference may still be made to it if it is considered important for copyright owners to be aware that the provision exists in other countries.

What is a copyright license?

- This section may not need any customization.

What is the difference between an exclusive and a non-exclusive license?

- Indicate whether an exclusive license agreement needs to be in writing, and whether it needs to be registered with any government authority, and, if so, provide the contact details or website address of the relevant institution. Indicate the same for non-exclusive licenses.

What happens when you sell your copyright?

- Can you assign any of the exclusive rights? Indicate whether copyright assignments need to be in writing and signed by the author; and whether they need to be recorded at the national copyright office, if any, or elsewhere. If so, you may also explain the procedure for doing so.

Box: Licensing Strategy

- If copyright cannot be assigned in your country, then this text should be modified accordingly. Otherwise, this section may not need any customization.

What is merchandising?

- This section may not need any customization.

How do you license your works?

- Provide relevant information about all CMOs in your country, and specify which specific categories of works are administered by each CMO. Does your country have a statutory licensing scheme for the digital transmission of musical works and sound recordings?

How do collective management organizations work?

- If there is/are CMO(s) in your country, indicate which of the six bullet points reflect the way the CMOs work in your country.

Box: Collective Management in the Music Industry

- Provide relevant information about all the relevant national CMOs. You may provide postal address, e-mail and/or website, if available, or provide such details in an annex to the guide. The text should be amended depending on the specific structure and practices of the CMOs in your country.

Box: Collective Management in Reprography

- Is there a CMO for reprographic works in your country? If so, provide relevant information and contact details. You may provide name, address, and other details, or include such details in an annex to the guide. Adapt the text according to the national laws, regulations and practices.

## SECTION 6: USING WORKS OWNED BY OTHERS

When do you need a permission to use the works of others?

- Last bullet point: For “fair use”, “fair dealing” or “limitations or exceptions included in the national copyright or related rights law”, use the correct wording in your country.
- The rest of the text may not require customization.

Do you also need permission to make electronic or digital use of the works of others?

- This section may not require customization.

If you have brought a work protected by copyright, are you free to use it as you wish?

- This section may not require customization.

Box: Licensing Software

- Are shrink-wrap and click-wrap licenses considered valid and enforceable in your country?
- If the national copyright legislation or case law provides for any exceptions that allow to make certain uses of a computer program without needing permission, this should be included in this box.

What content or material are you entitled to use without permission?

- Third bullet point: For “fair use”, “fair dealing” or “limitations or exceptions included in the national copyright or related rights legislation”, use the correct wording in your country.

When is a work in the public domain?

- Replace the example of Frédéric Chopin by that of a national artist.

How do you find out whether a work is still protected by copyright or related rights?

- Include any useful information for undertaking a search in your country.

When can you use a work under a limitation or exception to copyright or under the concept of “fair use” or “fair dealing”?

- This entire section needs to be adapted according to the provisions of your national legislation. Make particular reference to provisions, if any, concerning:
  - (a) access for persons with sensory-disabilities;
  - (b) parallel importing in special circumstances;
  - (c) access to “orphan works”;
  - (d) distance learning;
  - (e) teaching;
  - (f) multimedia works; and
  - (g) educational use of the Internet.

What is a levy system for private copying?

- State whether private copying is permitted under an exception and, if so, whether some payment system of levies exists. Explain on what basis and how the levies are collected.
- The example of Belgium may be omitted.

Can you use works protected by technological protection measures (TPMs)?

- State whether circumvention is prohibited by legislation or case law in your country. If so, explain what acts constitute such violation, and what is the liability. If circumvention of TPMs is not prohibited as such, then it would still be good to mention that the regular rules of copyright infringement still apply.

How can you get authorization to use protected works over which rights are owned by others?

- This section may not require customization.

How can your business reduce the risk of infringement?

- This section may not require customization.

Box: Summary Checklist

## SECTION 7: ENFORCING COPYRIGHT

When is your copyright infringed?

- This section should be modified according to the specific provisions of the national legislation.

What should you do if your rights are likely to be or have been violated?

- Are there any specific procedures for copyright infringement on the Internet? If so, explain. Do courts in your country issue interim injunctions? What other remedies do courts provide?
- Do you have border measures for suspected pirated and counterfeit goods? If so, provide the contact details of the agency or department responsible for border enforcement of IP rights. You may also include more detailed information on how such claims and measures are handled. If there is a website with information on this issue, you may include a reference to it here.

What are your options for settling copyright infringement without going to a court?

- Are there any special mechanisms created by law to make dispute regulation affordable, faster or easier? If yes, state these here.

ANNEXES

- Annex I provides a list of websites of WIPO divisions and international NGOs and may remain in the customized version. A list of (website) addresses of relevant national institutions (such as the national copyright office, CMOs, associations, etc) could also be added here.
- Annex II provides a list of websites of national copyright administrations and may remain in the customized version.
- Annex III should provide a summary of those international treaties dealing with copyright and related rights to which your country is member.
- If your country is a party to the Berne Convention, Annex IV should contain a list of member states with a web link to the website of the WIPO website [www.wipo.int/treaties/en/ip/berne](http://www.wipo.int/treaties/en/ip/berne) for a more updated list.
- A facsimile of the national application form for copyright registration could be provided as Annex IV, if the possibility for voluntary deposit or registration of copyright is available in your country.

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