

# Understanding Copyright



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## I. What is copyright?

Copyright is an intellectual property (IP) right that grants authors, artists and other creators protection for their literary, artistic and other types of creations, generally referred to as “works”.

## II. Understand what copyright protects

Copyright applies to:

- Original literary works such as word documents, instruction manuals and software;
- Original dramatic works such as ballet, opera, drama, original musical compositions;
- Original artistic works such as designs, sculptures, photographs, diagrams;
- Other works such as sound recordings, broadcasts, films and published editions.
- Characters (think Mickey Mouse, Donald Duck) may also be protected independently from the underlying work (cartoons) in which they appear. The courts in various countries have granted protection to “Asterix and Obelix”, for example.

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No matter if you are a copyright owner or a copyright user, the understanding of the copyright basics is crucial to any business. Safeguarding your own copyright and securing the permission of third parties before using copyrighted materials is not only legally required but also a good business practice.

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Copyright covers not only books but also advertisements, articles, graphic designs, labels, letters (including emails), lyrics, maps, musical compositions, product designs, etc.

### III. Obtaining copyright

Copyright protection is obtained without any official procedure. A work is automatically protected as soon as it exists, without any special registration, deposit, payment of fee or any other formal requirement. Seychelles has a system in place to allow for the voluntary registration of works. Such voluntary registration systems can help solve disputes over ownership or creation, as well as facilitate financial transactions, sales, and the assignment and/or transfer of rights.

#### How to qualify for copyright protection?

For a work to have copyright protection it must be:

- Fixed in a written or recorded form. Broadcasts are an exception to this rule, and do not need to be fixed.
- Original. This does not mean that the work must be particularly creative or innovative, only that it is the author's own intellectual creation. This is only the case for literary, dramatic, musical and artistic works. Sound recordings, films and broadcasts do not have to be original to be protected.

#### Copyright ownership

In general, the first owner of copyright to a work is the original creator or author of the work. However, there are some exceptions to this rule. In Seychelles, for example, the economic rights to a copyright work initially rest with the person/organization employing the creator.

#### Can I copyright software, games and mobile apps?

Computer programs and other types of software are considered as literary works for copyright purposes. They receive automatic protection without the need for registration.

#### Can I copyright a database?

Databases may receive copyright protection if the selection and arrangement of the contents is sufficiently original.

#### Scope of rights under copyright

Economic rights	
<b>Right to reproduction</b>	Refers to the act of making a copy of the work, or a substantial part of it, on the same or a different platform. E.g., reproducing a book on an electronic platform.
<b>Right of adaptation</b>	Involves the act of transforming a work, for example when novel is adapted into a screenplay.
<b>Right to communication to the public</b>	Refers to acts such as public performances (e.g., public projection of a movie, public reciting of poems, etc.), broadcasting, cable retransmission and making works available on the Internet. For instance, a person who owns a copy of a movie may play the movie in her home to a group of social guests without infringing the right of public performance.
<b>Public display right</b>	Refers to the right to show or exhibit a copy of a protected work publicly. For instance, if a particular copyrighted photograph were to be shown in a movie as a poster hanging on a wall (e.g., an Andy Warhol poster), the makers of the movie would need to obtain the consent of the copyright holder (Andy Warhol's heirs) in the photograph. Similarly, a person who owns a painting may display the work in their home without infringing the right of public display.

#### Remember!

Ideas or concept cannot be protected by copyright; copyright only protects the way these are expressed in a particular work. It does not protect the underlying idea, concept, discovery, method of operation, principle, procedure, process, or system, regardless of the form in which it is described or embodied in a work. Written instructions or sketches explaining or illustrating a concept or method, however, are protected by copyright.

For example, anyone is allowed to write an imaginary book about a wizard fighting against a spooky magician, but nobody is allowed to copy the Harry Potter books without an adequate authorisation (licence) of the rights holder, because the Harry Potter books represent an expression of that idea. Similarly, while it is permissible to take a photograph of the same person, it is not possible to copy a specific photograph if it is protected by copyright.

<b>Right of distribution</b>	Includes rental and lending rights. Copyrighted works, such as software (think games), movies, music, paintings, are frequently rented.
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#### Moral rights

<b>Right of attribution</b>	The author has the right to be named as the author of a work or to remain anonymous.
<b>Right of integrity</b>	The author has the right prevent the distortion of their work by, e.g., cutting scenes from a movie, adding a chapter to a book, adding parts to an architectural structure (right to integrity of a work).

#### *What are neighbouring rights?*

Neighbouring rights are a separate set of rights given to certain persons or bodies that help make works available to the public. The beneficiaries of neighbouring rights are performers, producers of phonograms, and broadcasting organizations.

#### *Copyright for businesses*

Most businesses have aspects of their work protected by copyright and are copyright authors and/or owners. A company is also a copyright user if it uses copyrighted materials. The use of copyrighted materials may also be a company's daily activity (e.g., radio stations, publishing houses, libraries, restaurants, or shops) or an occasional tool to increase market presence and develop business operations. On the other hand, when a company's activity comprises the creation of corporate publications, brochures, marketing activities, etc., or when it participates in the creative industries (artisans, musicians, film makers), the company is a copyright owner. Sometimes, however, the author of a work does not own copyright, as in the case of joint works, collective works, and works done for an employer.

## IV. Limitations and exceptions to copyright (fair use)

Under certain, very limited circumstances, it may be possible to use works that are not in the public domain without requesting authorisation from or remunerating the author or the right owner. This can occur if such uses are covered by limitations and exceptions. Copyright limitations and exceptions include the quotation of works for purposes such as criticism or review, use of works for educational purposes, or the use of news of the day. For example, in Seychelles utilising a copyrighted work, which has lawfully been made available to the public, in publications, broadcasting or sound or visual recordings, for teaching or scientific research of a work, is permitted provided that such utilisation is compatible with fair practice and does not exceed the extent justified by the purpose.

#### *Public domain works (commons)*

Public domain works are works that no longer have a right owner (of the economic rights). This is usually because the term of copyright protection has expired. For example, the economic rights over the famous poem Iliad, written by Homer, have lapsed and the work can be used or exploited without the need to obtain authorisation or remunerate the right owner.

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## V. USE OF COPYRIGHTED WORKS

You need an authorisation (licensing or assignment of rights) in order to use a work protected by copyright. For certain uses, the authorisation may come from a collective management organization instead of directly from the right owner, for example the authorisation to use a song at a public concert.

Sometimes, works can be used without any express authorisation. This is in the case of limitations and exceptions to copyright, and in the case of works being made publicly available under specific conditions or licences that allow certain uses, e.g., the Creative Commons licence, MIT Licence, the Mozilla Public Licence, etc.

### *Can I license my works?*

Generally, economic rights can be transferred and divided. A right owner may agree to let someone use a work under certain conditions (licensing), or they may give or sell the rights to someone who then becomes the new owner (assignment). And if a copyright owner dies, their heirs or successors will inherit their economic rights.

### *What are collective management organizations (CMOs)?*

If you wish to license your work to users such as broadcasters, publishers, or even entertainment establishments (i.e., bars, nightclubs), joining a CMO may be a good idea. CMOs monitor uses of works on behalf of creators and publishers and are in charge of negotiating licences and collecting remuneration. They are particularly common in the field of musical and literary works where there may be a large number of users of the same work and it would be difficult both for the owner of rights and the users to seek specific authorisation for every single use and to monitor them.

In Seychelles, the Seychelles Authors and Composers Society (SACS) is a Collecting Society that exists for collection, administration and distribution of royalties for Seychellois Performers, Authors, Arrangers, Producers and Publishers. For instance, SACS ensures that licensed entertainment establishments using copyrighted musical works have settled their royalties with SACS in accordance with the Copyright Act of Seychelles. The licensed entertainment establishments are hotels, restaurants, discotheques, public bars, and any other licensed entertainment establishments using copyrighted musical works.

### *Use of works published on the Internet*

It is always prudent to check that you are not infringing copyright and to get permission for the use of other people's work. This includes using content taken from the internet such as images on websites. Works published on the Internet, including on social media platforms, are NOT in the public domain and may therefore may NOT be widely used by anybody without the authorisation of the right owner.

Oftentimes, websites contain a general licence (e.g., Creative Commons licence) that might exempt you from requiring a direct authorisation for certain uses. Such licences may authorise only certain uses, e.g., for non-commercial uses. You may not use a content published on the Internet, unless:

- the use is covered by the general licence granted through the website (e.g., Creative Commons);
- the use is covered by a copyright limitation or exception (e.g., news of the day, personal use, quotations, teaching); or
- you have obtained authorisation for such use (licence from the copyright owner or a CMO).

Similarly, authorisation is required if you are engaged in publishing or making available books, publications, sound recordings, broadcasts or performances through your website.



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## VI. Protection of copyright

### *How long will my copyright last?*

In Seychelles, the economic and moral rights are protected during the life of the author and for 50 years after their death.

### *Can I receive international protection for my copyright?*

Copyright protection is automatic in all states party to the Berne Convention.

You must remember that copyright laws are territorial, i.e., they apply within the country in which they were registered. If you wish to protect your work in other countries, you must ensure that you comply with the relevant legal requirements in the country(ies) in which you wish your work to be protected.

### *What happens if my copyright has been infringed?*

You can lodge a claim before a civil court for monetary compensation and an injunction to prevent the continuation or repetition of the copyright infringement. Before doing this, it is often advisable to first send a formal notification to the alleged infringer, requesting them to stop the infringement and/or to pay compensation.

Alternatively, if the unauthorised reproduction amounts to the criminal offence of copyright piracy, a complaint may be submitted to the police, public prosecutor or other competent authority.

If the unauthorised reproduction of the work is being made available through the internet, it may be possible to notify the relevant internet service provider, asking it to prevent access to the infringing copy. Such procedures are known as “notice-and-take-down”.

If you are a member of a CMO, it will often be enough to request it to take the appropriate steps. If you are not, it is up to you to act in order to protect your rights. It is often advisable, in such a case, to instruct a lawyer to do so on your behalf.

### *The © Symbol*

The © symbol is merely a notice by the owner that copyright exists. The presence of the symbol does not give the copyright owner any additional rights; the absence of the symbol does not mean that the copyright owner has waived his rights. In practice, the symbol is usually followed by the year when a copy of the work was first made available and the name of the copyright owner.

Although a copyright notice is not required for protection, it is strongly advisable to place a copyright notice on or in relation to your work. The notice reminds people that the work is protected and can in this way deter them from copying it. The notice also identifies you as the copyright owner, making it easier for those who want to use the work to contact you for permission.

### *How do I protect my digital works?*

Copying digital works and transmitting them over the Internet is easy, and many businesses deploy technological measures to protect their digital copyrights through measures known as “Digital Rights Management” (DRM) tools and systems. The DRM tools are used for defining, tracking and enforcing permissions and conditions through electronic means and throughout the content lifecycle. This can be done through rights management information (labelling of the digital content, digital object identifiers, time stamps and digital watermarks) and technological protection measures (encryption, access control or conditional access system, or releasing only versions of lower quality).



**Trade Department**  
**in collaboration with Registration Division**  
**Republic of Seychelles**

For more information, please contact the:

Trade Division

Ministry of Finance, Economic Planning and Trade  
2nd Floor|Maison Esplanade | P.O Box 313 | Victoria | Seychelles  
Tel: 4382000|Email: [enquirywto@finance.gov.sc](mailto:enquirywto@finance.gov.sc)

&

Registration Division

Department of Legal Affairs  
P.O. Box 142, Republic of Seychelles  
Telex: 260 SEYGOV SZ Telegrams: SEYGOV, Seychelles,  
Telephone: 4280902, Email: [wpierre@registry.gov.sc](mailto:wpierre@registry.gov.sc)