

Copyright, a user's guide...

What can be protected by copyright?

In accordance with international law, copyright in Switzerland protects literary and artistic works that have individual character, in particular works of literature, musical works, audiovisual works, choreographic works, photographic works, applied art works, works with a scientific or technical content, etc...

Software programmes are also works protected by copyright.

Depending on circumstances, designs (i.e. industrial drawings and models) can also be protected by copyright in addition to the protection conferred on them by federal law on design protection.

Swiss law also protects performing artists, phonogram and video producers, and radio and television broadcasting organisations. Their services can receive protection by means of *similar rights to copyright*, based on the interpretation of a literary or artistic work or on the reproduction or distribution of such a work by means of phonograms or video recordings.

What are the criteria for recognition of copyright?

In order for a literary or artistic work to be protected by copyright, it must have *individual character*. This means that the work has to exhibit particular originality which distinguishes it from the ordinary and which demonstrates a specific creative activity by its author that goes beyond the obvious.

Thus, the presentation of information in alphabetical order (listings, directories) has no individual character and does not constitute a creative activity protected by copyright. Similarly, drafting texts whose structure and content are dictated by scientific facts or legal requirements cannot be protected by copyright, (Ruling on provisional measures by the President of the Civil Tribunal of Basel-City, 20 January 2004).

What protection does copyright confer?

Copyright confers on its owner the exclusive right to decide whether, by whom and under what conditions his work will be used. This right extends in particular to the reproduction, translation, adaptation, distribution, sale, performance, radio and television broadcasting of the work, and the use or availability of a work on the Internet.

What are the formalities?

The protection of literary and artistic works is automatic from the moment that the work is created. Unlike other fields of intellectual property (patents, trademarks, designs), it exists independently of any required formalities, such as filing or



registration. This principle is rooted in the Berne Convention for the Protection of Literary and Artistic Works (article 5.2) and is thus internationally recognized.

Nonetheless, there are national laws which provide for the registration of literary and artistic works in an official register. The purpose of these registers is to facilitate proof, in the event of a dispute, for example as to the identity of the author or the time of creation of the work. Their purpose is not to confer copyright.

There is no official copyright register in Switzerland.

How long does protection last?

In Switzerland, copyright ends 70 years after the death of the author; however, for software, this term is reduced to 50 years after the death of the author.

Similar rights to copyright end 50 years after the performance of the performing artist, the making of the sound or video recording or the broadcasting of the radio or television programme.

Internationally, the Bern Convention for the Protection of Literary and Artistic works provides a minimum term of protection of 50 years after the death of the author.

Is copyright protection international?

There are conventions guaranteeing international copyright protection. These conventions are based on the principle of reciprocity, by virtue of which any Swiss owner of copyright or similar rights will have the same rights recognized abroad as the nationals of the country concerned. The two countries affected must simply be parties to the same convention. Most industrialized countries are signatories to the main copyright convention (the Berne Convention), and the convention on similar rights (the Rome Convention).

Does the © symbol have to be used for protection to be valid?

Since copyright protection is automatic, it is not compulsory to use the © symbol, the reference « Copyright » or « all rights reserved » on all copies of the work to indicate that it is protected. A reference of this type does not confer any rights and does not affect the existence of any rights.

It may, however, be useful in order to inform and warn third parties that the use of the work is not authorized.

When can works be used without the author's authorisation?

The law only authorizes the use or reproduction of a work for private purposes or within a circle of persons closely connected to each other (parents, friends). This exception does not apply to computer programmes.



It is a matter of interpretation as to whether, in a given situation, one is in a circle of persons closely connected to each other. Thus, this question is raised by the organization of parties that, although private, include a large number of people.