

## COPYRIGHT AND NEIGHBOURING RIGHTS

### Introduction

Copyright protection has been provided in Malta since 1911. Though the laws that enabled such protection were amended several times over the years, it was nonetheless felt that the varying needs of authors and artistes as well as the requirements of the business and science community – particularly as a result of modern-day technology – necessitated a total re-haul of the relevant legislation. As a result, new legislation – the Copyright Act (Act XIII of 2000) -- was enacted in April, 2000.

In line with Malta's present commitment to proceed with EU accession, the new copyright legislation is not only TRIPS-compliant but is also in line with the *Acquis Communautaire*<sup>\*</sup>.

Malta is a member of the World Intellectual Property Organisation, the Patent Convention, the Berne Convention, the Paris Convention for the Protection of Industrial Property and the Universal Copyright Convention. Moreover, in 1995, Malta signed the World Trade Agreement that incorporated the TRIPS Agreement.

### Works eligible for copyright protection

The following works are eligible for copyright protection:

- ⇒ artistic works;
- ⇒ audiovisual works;
- ⇒ databases;
- ⇒ literary works; and
- ⇒ musical works.

There are also *sui generis* rights in respect of:

- databases; and
- semiconductor product topographies.

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<sup>\*</sup>Council Directives 87/54; 91/250; 92/100; 93/16; 94/824; 96/644; 96/9; and 93/83.

### **In whom does copyright vest?**

Subject to any agreement to the contrary, copyright will normally vest in the author or joint authors.

However, in the case of *computer programs, topographies* and *databases* that are made in the course of employment and in the execution of the author's duties following instructions given by the employer, copyright shall vest in the employer subject to any agreement to the contrary.

### **Specific requirements to qualify for copyright protection**

To qualify for copyright an *artistic, literary* or *musical* work must:

- ◆ have an original character; and
- ◆ be written down, recorded, fixed or otherwise reduced to material form.

A *database* must constitute the author's intellectual creation by reason of the selection or arrangement of its contents. Any such copyright shall not extend to its contents.

### **Formalities**

The only formality required by law for a work to qualify for copyright protection or for neighbouring and *sui generis* rights to apply is that the author, performer, producer, broadcaster or creator, as the case may be, of the work, at the time when the work was made, be either:

- \* a citizen of Malta; or
- \* a person domiciled in Malta; or
- \* a person who is permanently resident in Malta; or
- \* a person who is a citizen, or is domiciled or permanently resident in a State in which copyright and neighbouring rights are protected under an international agreement to which Malta is a party; or
- \* a body of persons or a commercial partnership constituted, established, registered and vested with legal personality under the Laws of Malta; or
- \* a body of persons or a commercial partnership constituted, established, registered and vested with legal personality under the Laws of a State in

which copyright and neighbouring rights are protected under an international agreement to which Malta is a party.

Irrespective of the above, copyright is granted to any work which is eligible for copyright and neighbouring rights shall apply to any work which is made, first published, broadcast or communicated to the public, as the case may be, in Malta or in a State in which such works are protected under an international agreement to which Malta is a party.

Copyright is also granted on every work eligible for copyright and neighbouring rights apply to any work made by or under the direction or control of the Government of Malta and also such governments of other States, international bodies or other inter-governmental organizations as may be prescribed.

#### **Duration of Copyright Protection**

TYPE OF WORK	DURATION
<i>Artistic works, databases, literary and musical works</i>	70 years commencing from the end of the year when the author (or, in the case of joint authors, when the last surviving author) dies
<i>Audiovisual works</i>	70 years commencing from the end of the year in which the last of the following dies: <ul style="list-style-type: none"> <li>• the principal director;</li> <li>• the author of the screenplay;</li> <li>• the author of the dialogue; and</li> <li>• the composer of music specifically created for use in the work.</li> </ul>

In the case of anonymous or pseudonymous *artistic, literary or musical* works, and in the case of *collective* works, copyright shall subsist for 70 years from the end of the year in which it was made available to the public or in which it was created, as the case may be.

Where any such work is published in volumes, parts, installments, issues or episodes, such term shall run for each item separately.

A person who, for the first time, lawfully publishes or communicates to the public a previously unpublished work the copyright protection of which has expired, shall be granted copyright protection for a period of 25 years from the time when the work was first published or communicated to the public.

### **Rights of copyright holder**

The holder of a copyright shall have the exclusive right to *authorize* or to *prohibit* the doing in Malta in respect of the protected material, either in whole or in part and either in its original form or in any form recognizably derived from the original, any of the following acts:

- direct or indirect, temporary or permanent, *reproduction* by any means and in any form, in whole or in part;
- *rental* and *lending*;
- *distribution*;
- *translation* in other languages (including different computer languages);
- *adaptation, arrangement* and any other *alteration* and the *reproduction, distribution, communication, display* or *performance* to the public of the results thereof;
- *broadcasting* or *rebroadcasting* or *communication* to the public or *cable retransmission*; and
- *display* or *performance* to the public.

There are a number of exceptions to these rights as, for example, in the case of the doing of acts for purposes of research, private use, criticism or review provided that, if such use is public, it is accompanied by a sufficient acknowledgement; the doing of any of the said acts by way of parody, pastiche or caricature; reproduction for face-to-face teaching; reading or recitation to the public of a work if accompanied by a sufficient acknowledgement etc..

Copyright in a work of architecture shall also include the exclusive right to *authorize* or *prevent* the erection of any building which reproduces the whole or

a substantial part of the work either in its original form or in any form recognizably derived from the original.

### **Moral rights of authors**

Without the author's consent, it is not permissible for any person (including the assignee of the copyright or a licensee thereunder) to:

- *mutilate*;
- *modify*;
- *distort*;
- subject to any *derogatory action*;

any work during its term of copyright in a way that is prejudicial to the honour or reputation of the author.

Until expiry of the copyright, the author of a work also has the right to:

- claim authorship of his work and, in particular, the right that his name be indicated in a prominent way on the copies and in connection with any public use of his work; or
- request that his name be not indicated or, instead, that his pseudonym be so indicated.

### ***Sui generis* rights in respect of databases**

The maker of a database who can show that there has been *qualitatively* or *quantitatively* a substantial investment in either the obtaining, verification or presentation of the contents of the database has, irrespective of the eligibility of that database or its contents for protection by copyright and subject to certain exceptions, the right to *authorize* or to *prohibit* acts of extraction or re-utilisation of its contents, in whole or in substantial part evaluated qualitatively or quantitatively.

➤ *Duration of right.* 15 years from the first of January of the year when the database was made or, if made available to the public in whatever manner before the expiry of this term, 15 years from the first of January of the year when the database was first made available to the public.

## ***Sui generis* rights in respect of semiconductor product topographies**

Creators of semiconductor product topographies which are the result of the creator's own intellectual effort and are not commonplace in the semiconductor industry have, subject to certain exceptions, the exclusive right to *authorize* or to *prevent* in Malta the:

- *reproduction* of the topography;
- its *commercial exploitation*; or
- the *importation* for the purpose of commercial exploitation of the topography or of a semiconductor product manufactured by using the topography.

Any such *sui generis* rights shall not extend to any concept, process, system, technique or encoded information embodied in the topography.

➤ *Duration of right.* 10 years from the end of the year in which the semiconductor product topography was first commercially exploited anywhere in the world or 15 years from this fixation or encoding of the semiconductor product topography if it has not been commercially exploited.

## **Neighbouring rights**

### **❖ Performers**

Performers have the exclusive right to *authorize* or to *prohibit* the doing in Malta of any of the following acts:

- *fixation* of their performance;
- direct or indirect, temporary or permanent, *reproduction* by any means and in any form, in whole or in part, of a fixation of their performance;
- *rental* and *lending* of their fixed performances;
- *distribution* of the original performances fixed in phonograms and of copies thereof;
- *making available to the public* of the fixation of their performances, by wire or wireless means, in such a way that individuals may access them from a place and a time chosen by them; and
- *broadcasting* and *communication* to the public of their performances unless the performance is itself already a broadcast performance or is made from a fixation.

Term of protection -- 50 years from the end of the year in which the fixation of the performance was first lawfully published or first lawfully communicated to the public, whichever is the earlier.

In the absence of such publication or communication, the protection shall be of 50 years from the end of the year when it was first performed.

Moral rights – A performer has the moral right to claim, when reasonably practicable, to be identified as the performer of his performance and to prohibit any distortion, mutilation, or other modification of his performance that would be prejudicial to his reputation.

❖ **Producers of sound recordings and producers of first fixations of audiovisual works**

Producers of sound recordings and producers of the first fixation of audiovisual works have the exclusive right to *authorize* or to *prohibit* the doing in Malta of any of the following acts:

- direct or indirect, temporary or permanent, *reproduction* by any means or form in whole or in part;
- *rental* and *lending*;
- *distribution*; and
- *making available to the public*, by wire or wireless means, in such a way that individuals may access them from a place chosen by them.

➤ Term of protection – 50 years from the end of the year in which the sound recording or the first fixation of the audiovisual work was first lawfully published or lawfully communicated to the public, whichever is the earlier.

In the absence of such publication or communication to the public, the protection shall be of 50 years from the end of the year in which the first fixation was made.

➤ Remuneration -- If a sound recording published for commercial purposes (or a reproduction of such sound recording) is used, directly or indirectly, for

broadcasting by wireless means or for any communication to the public, the user must pay to the producer of the sound recording and to the performer a single equitable remuneration to be shared equally between them. This remuneration shall be paid to a collecting society or, in the absence of one, to the producer of sound recordings who would then distribute half such remuneration to the performer.

#### ❖ **Broadcasting organisations**

Broadcasting organisations have the exclusive right to *authorize* or to *prohibit* the doing in Malta of any of the following acts:

- *fixation* of their broadcasts or initial cable transmissions;
- direct or indirect, temporary or permanent, *reproduction* by any means or form, in whole or in part, of fixations of their broadcasts or initial cable transmissions;
- *distribution* of fixations of their broadcasts or initial cable transmissions;
- *rebroadcasting* of their broadcast as well as the *communication* to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; and
- *the making available to the public* of fixations of their broadcasts or initial cable transmissions, by wire or wireless means, in such a way that individuals may access them from a place and at a time chosen by them.

➤ *Term of protection* – 50 years from the end of the year in which the broadcast was first transmitted, whether by wire or over the air, be it by cable or satellite.

#### **Remedies in case of infringement**

➤ *Damages or payment of fine and restitution of profits*. In case of infringement, the rightholder has either one of 2 courses of action against the infringer, namely, either:

- to institute a civil action suing the infringer for damages; or alternatively
- to institute a civil action requesting the Courts to condemn the infringer to pay a fine to be determined by the same Court and to return all the profits he derived from the infringement of the copyright, neighbouring rights or *sui generis* rights.

➤ Defence in case of request to return profits. If the infringer proves to the Court's satisfaction that, at the time of the infringement, he was not aware and could not reasonably have been expected to be aware of the fact that copyright, neighbouring rights or *sui generis* rights subsisted in the work to which the civil action relates, the Court will not condemn the infringer to the restitution of the profits.

➤ Additional damages. Having regard to all the circumstances of the case (in particular, to the flagrancy of the infringement and any benefits accruing to the infringer by reason of the infringement), the Courts may condemn the infringer to pay such *additional* damages as the justice of the case may require.

➤ Return of infringing articles. The Courts may also order that all the infringing articles still in possession of the infringer be delivered to the rightholder.

➤ Liability for infringement of moral rights. Any such infringer shall be condemned by the Court:

- to pay a fine and damages to be determined by the Court; and
- to destroy all the infringing articles still in his possession provided the Court is satisfied that the prejudice caused is so serious as to justify such measure.

### **Criminal Penalties**

In addition to the civil remedies, violation of copyright entails criminal penalties.

Accordingly, whosoever violates the rights of the copyright owner shall be liable, on conviction, to a fine of up to 5,000 Malta liri and/or to imprisonment of up to 1 year. Moreover, conviction shall entail termination of a trader's licence to run a retail shop. The licence cannot be transferred or renewed.

### **Transfer of copyright and neighbouring rights**

Copyright and neighbouring rights are transmissible by:

- assignment;
- operation of law; or
- testamentary disposition.

An assignment or testamentary disposition of copyright or neighbouring rights may be limited by reason of:

- the rights transferred;
- a specified country or geographical area; or
- for a specified period only of the copyright or neighbouring rights.

Any such assignment must result by agreement in writing between the parties.

An assignment, licence or testamentary disposition of copyright or neighbouring rights may be effected in respect of a future work or in respect of an existing work in which copyright or a neighbouring right does not yet subsist.

In a testamentary disposition of the material on which a work is first written or recorded, any copyright or neighbouring rights shall also be deemed to be included, unless the testator provides otherwise.

**The contents of this article are intended to provide general information only and cannot substitute legal advice for each specific case.**  
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