

# Legal Aspects of scientific publishing in connection with Open Access

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# PLAN

- Preamble
- The general principles of copyright and OA on the international arena
- Open Access at the University
- Conclusion

# The origins of copyright

- 15th-century : invention of the **printing press**
- The **first copyright laws** : 1710 (England) – 1793 (France)
- The modern copyright system : response to **technological developments** and society's need – marked by the conclusion of **international agreements**

# Scope of copyright protection

- Copyright protects « works of literary, scientific and artistic nature »
- **Texts, photography's, musical works, audio-visual works, web-design, ...**
- **Data bases – software**
- Exclusion : speeches made by Parliament, official documents by public authorities

# The condition of originality

- Common law countries vs. civil law countries
- **Belgium** : individual personality of its creator  
– own intellectual creation of the author
- -> **minimal creative choices**
- What is **not required** : quality, artistic merit, novelty, particular length

# Exclusion of the mere ideas

- The work must have a **concrete – tangible form**
- ideas, concepts, business methods, ... are not protected by copyright
- No registration – deposit is necessary ; **copyright protection is automatically granted**
- the use of copyright symbol ©

# Copyright ownership

- Initial ownership vested in **authors** (= the natural person who created the work)
- **Exceptions** in some countries : corporate bodies, legal entities
- **copyright transferable** after death or through contractual agreement
- Copyright in **works created by several persons** : joint works – collective works

# Economic Rights of authors

- **Exclusive rights**
- A bundle of prerogatives corresponding to different uses
- Rights of **reproduction** : reproduction, adaptation, translation, rental and lending
- Rights of **distribution** : the putting into circulation of tangible copies – principle of exhaustion



# Economic Rights of authors

- Rights of **communication to the public**
- Aim at rendering a work available to an indefinite number of persons
- The right of **public performance** – cf. family circle – author's closest social acquaintances
- **Remote transmission** (wire – wireless – online)

# Moral rights of authors

- Protect the **author's personality**
- Cannot be transferred or alienated
- Right of **attribution** (paternity)
- Right of **integrity**
- Right of **disclosure**

# Limitations to copyright protection

- **Protection expires** after a period of time
- Exceptions for certain **legitimate uses** :
  - Freedom of expression
  - Access to knowledge – public interest
  - Private copying
- Concepts and **rules vary from one legislation to another**

# The right to quote

- From **lawfully published works**
- For **specific purposes** (criticism, polemic, review, teaching or in scientific works)
- Compatible with **fair practice**
- **To the extent justified** by the specific purpose
- Indication of the **name of the author** and the **source** of the quoted work

# Limitations in favour of schools and universities

- Purpose of **illustration in the context of education** or for **scientific research**
- **Reproduction** of complete articles or works of visual art or short fragments of other works
- Analogue or digital format
- **Distance teaching** – closed network (login and password)

# Limitations in favour of schools and universities

- Reproduction/communication to the public must be justified by the **intended non-profit generating purpose**
- Must **not prejudice the normal exploitation** of the work (educational work)
- Indication of the **name of the author/the source**
- **Fair compensation**

# Transfert of rights

- **Contractual transfert of rights :**
  - Concerns only economic rights
  - Assignment vs. Licensing (exclusive – non-exclusive)
  - Each right may be transferred or licensed separately
- **Transfert of rights after death - succession**

# Transfert of rights

- **Valid transfer/license** is not subject to any condition
- **Proof of transfer/license** : in writing - with specific mentions
- All contracts are **interpreted restrictively**
- Transfer of rights relating to **unknown future forms of exploitation / future works**



# Copyright infringement

- **Interim or permanent injunctions**
- **Confiscation measures**
- **Penalties** : full compensation for actual losses suffered as a consequence of the copyright infringement
- Lump sum compensation
- Fixed amounts of damages

# Copyright infringement

- **Criminal offence = act of counterfeiting**
- Malicious or fraudulent intent
- The use of the name of the author
- The selling, reselling, renting, ... of any goods for commercial reasons knowing that such goods are counterfeit

# OA on the international arena

- *free availability on the public internet, permitting any users to read, download, copy, distribute, print, search, or link to the full texts of these articles, crawl them for indexing, pass them as data to software, or use them for any other lawful purpose*
- Concerns **journals as well books**
- **3 stages in the publication cycle**

# OA at the ULg

- Need for **education**
- **OA only if the author has the required rights**
  - No contrat – general terms and conditions
  - Transfer of right other than the electronic distribution rights
  - Publisher's authorisation through ShERPA/RoMEO – additional agreement – specific mailing

# Publisher's authorisation

- Deposit the **postprint author** and sometimes the **publisher's PDF Version**
- Respect for an **embargo period** of 6 to 24 months
- Subject to the requirement to **link back to the original publication**

# Access via the University's intranet

- According to **exceptions** laid down by the Belgian law **in favour of research and education**



Exceptions and limitations have not been harmonized -> they may vary from one country to another

- « **Request-a-print** » **system** for educational or scientific purposes

# Repository license

- **Non-exclusive** - granted on a **worldwide scale**, for **all the duration of copyright protection** and without any payment of remuneration
- Authors are asked to waive his/her **right to integrity** to the extent justified by the deposit
- **Collective works**

# End user's license

- Users are allowed to **read, download, copy and print**
- **Right to quote** – indication of the source and name of author(s)
- No modification
- No commercial purpose



# Information resources

- Legal guide (french only – open access) :  
[http://orbi.ulg.ac.be/bitstream/2268/11918/1/fr\\_rights.pdf](http://orbi.ulg.ac.be/bitstream/2268/11918/1/fr_rights.pdf)
- Tool Box (restricted access) :  
<https://orbi.ulg.ac.be/files/tools.html>
  - Publication agreement – addition of a clause
  - Request for self-archiving – Addendum
  - Request for self-archiving

# Information resources

- FAQ : <https://orbi.ulg.ac.be/help/faq-content.html>

# Thank you for your attention

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