

1. What does copyright and related rights mean and cover, and is it the same all over the world?

In terms of Maltese law, copyright covers a range of specifically defined exclusive rights that are owned by individuals or organisations in respect of original, creative work. For example, these rights include, among other things, the right to authorise or prevent third parties from reproducing a work or a substantial part of it, the right to alter it or to adapt it and the right to distribute or communicate it to the public. Broadly similar rights (also known as related rights or neighbouring rights) are given to performers, producers of sound recordings, producers of audiovisual works and to broadcasters in respect of the exploitation and dissemination of their performances, sound recordings, audiovisual works or broadcasts. It is pertinent to note that although there are a number of common or similar principles in copyright that are understood and treated in a like manner in various countries (in particular across the countries that are members of the European Union), there are, however, a number of differences. It is therefore always advisable to check the law properly (and to seek counsel where necessary) when trying to ascertain what type of protection you might have in law, in respect of any work which you might create or otherwise if you wish to use the works of others in any manner whatsoever.

2. Who owns copyright and how does copyright benefit creators, 'rights holder(s), consumers, society, economy and culture as a whole?

In general, copyright is owned by the author of an original work, although certain exceptions exist, in particular where computer software or databases are created under employment or under commission, where usually copyright vests with the employer or with the person who gave the commission. It is to be noted that copyright is a property right and may therefore be transferred or assigned by virtue of a private agreement. Even though the author might no longer be the owner of copyright in the work, he or she retains certain rights at law, in particular the right to be indicated as the author of the work on all copies that are issued and in connection with any public use of the work.

A fundamental aspect of copyright is the balance that it seeks to strike between the rights of the owners of copyright and the interests of the public at large, including consumers. The main aim of the copyright owner is to retain and exercise control over the use that is made of his or her work (which he or she may then transfer or license in exchange for a fee or a royalty). However, the interests of consumers are secured through a limited period of protection available to copyright holders (beyond which the work in question would fall into the public domain) and also through a number of exceptions to the copyright owner's rights, the aim of which is to afford reasonable access to the works without the need to obtain the copyright owner's permission and without the need to pay any fee. In such a manner copyright takes the form of an incentive for industry to continue to innovate and produce works that ultimately serve the interests of the public at large, mainly the consumer sector. It also fosters growth in the economy of the country and plays a fundamental role in the cultural growth of society, seen mainly in the creative arts, literature and in the various spheres of activity of academic, research and educational institutions.

3. Do I automatically get copyright protection, for example, if I take a photograph with my phone, or do I have to register my work to get protection?

Under Maltese copyright law, if you are a citizen or permanent resident of Malta or if you are domiciled in Malta, or in a state in which copyright is protected under an international agreement to which Malta is also a party, you are automatically protected by copyright as soon as all of the essential elements of copyright coexist. These elements require a) a work eligible for copyright protection, which is b) original in character and c) certain works must also be written down, recorded, fixed or otherwise reduced to material form. In such a case, your work (e.g. a photo taken with your mobile phone) would be automatically protected by Maltese copyright legislation and you would not need to register that work anywhere.

If you are a member of a body of persons or a commercial partnership constituted, established, registered and vested with legal personality under the laws of Malta (or those of a state in which copyright is protected under an international agreement to which Malta is also a party) the same rules would apply.

4. What is copyright infringement? Can I get in trouble for copyright infringement? What if I wasn't aware that I infringed something protected by copyright?

Copyright infringement generally means that you have done (or caused another person to do) an act, the doing of which is controlled by copyright (such as copying, renting, distributing, translating, adapting, broadcasting, displaying to the public or communicating to the public a work protected by copyright) without permission (by way of a licence) from the copyright owner/holder. To infringe copyright, you must have used a 'substantial' part of the protected work in any such act and your actions must not have otherwise been permitted by law. If you infringe copyright in this way (or in a way specifically forbidden by law) you may be exposed to both civil and criminal liability. As such, you may be obliged to pay damages to the copyright owner/holder as well as pay any fines/penalties that may be applicable, together with other measures that may be imposed. In some cases, you may also face a prison term if found criminally responsible. Knowledge of infringement is not required for you to be found civilly liable (although it may play a role in the amount of damages due to the copyright owner/holder). Moreover, it is arguable that even if you have no specific criminal intent, infringing copyright by way of trade or business or otherwise for economic gain may expose you to criminal liability.

5. Under which conditions can I use a work protected by copyright created by another? I was told that using works created by others is simply a quote and thus is always allowed.

There are a number of ways in which a work protected by copyright may be lawfully used. The most straightforward way is to obtain the **written** consent of the copyright owner. However, a protected work can also be used in a number of ways that do not require the consent of the copyright owner. Excerpts or 'quotes' can be reproduced freely, as long as the excerpt/quotation is not substantial. This criterion of 'substance' is not necessarily determined on the basis of 'quantity' (how much is quoted) but it can also be determined on the basis of 'quality' (i.e. **what** is quoted). Unless there is a licence in place, it is usually safer to use quotations on the basis of specific legal exceptions. These are mainly the right to copy, translate, distribute or communicate to the public quotations for purposes such as criticism or review, the right to copy, translate, distribute or communicate to the public extracts of public lectures or similar works and the right to read or recite in public any reasonable extract from a published literary work provided certain conditions are met. One such condition applicable in all these cases is that attribution of the source (including the author's name) must always be included in such quotations/extracts.

6. Am I allowed to use music protected by copyright as a soundtrack for a home video that I made and want to upload on a video platform?

You are only allowed to do this with the copyright owner's consent (usually under a licence). A licence may be required for the music recording you wish to use, as well as one for the underlying music itself. You may also otherwise use parts of copyrighted music/recordings if the amount of music you use is not 'substantial'. There is no explicit rule on what can be deemed 'substantial' and this will depend on the music/recording in question, as well as the manner in which it is used in your home video. The test is not necessarily based on quantity (how much music is included) but rather, quality (which parts of music are included). Before uploading any content belonging to someone else (such as music, images and videos) it is always advisable to obtain consent from the copyright owner. Alternatively, music in the public domain (i.e. works in respect of which the term of copyright protection has expired) may be used without any restrictions. It should be noted that 'royalty free' music may not necessarily be in the public domain (i.e. certain terms of use may still apply and a payment of some sort may still be due).

7. Am I allowed to give a copy of a work protected by copyright to a family member or a friend?

Under Maltese law, there is a limited right to make a private copy of a protected work for personal use (subject to various conditions). However, unless you are allowed to by the copyright owner (usually under licence), you are not generally allowed to give such a copy to a third party — including to a family member or a friend. However, lending for use the protected work itself, or an authorised copy, (e.g. a music CD you have purchased) for a limited period of time to a third party seems to be allowed under certain conditions, provided this is not done through establishments that are accessible to the public and provided the lending is not done for direct or indirect economic or commercial advantage. It is always advisable to read any applicable licence terms and conditions or in the absence thereof, to contact the rights holder in advance.

8. Am I allowed to download a work protected by copyright from the internet and does it matter which technology is used and whether I download only parts of the work?

You may only download works with the authorisation of the copyright owner (usually under licence) or else freely download any works in the public domain (i.e. works in respect of which the term of copyright protection has expired). You may also otherwise download ‘parts’ of works provided that these are not substantial. However the test for what amounts to a ‘substantial part’ of the work depends on the work in question and is not necessarily dependent on ‘how much’ you download but rather, ‘what’ you download. The technology used to download the work is not relevant. It is always advisable to read any applicable licence terms and conditions or in the absence thereof, to contact the copyright owner prior to downloading.

9. I tried to copy a movie from a DVD to my computer, but could not do it because of something called ‘Technical Protection Measures’. What is that and am I allowed to get around them in order to make private copies?

‘Technical Protection Measures’ (TPM) refer to a type of technology, device or component designed either to restrict or control access to material protected by copyright, or to prevent it from being copied. The general rule is that these TPMs cannot be circumvented. However, in very limited cases, if you are specifically entitled to one of certain ‘permitted acts’ (such as in the case of the ‘private copying’ exception or in cases of ‘illustration for teaching purposes’), then you may possibly be entitled to legal access to the protected work — even though there is a TPM in place. In such limited cases, the rights holder is bound to provide you with the means to allow you to enjoy your rights at law (as limited as these may be). Therefore, the first thing you should do is try and contact the rights holder (or exclusive licensee). If the rights holder fails to abide by his or her obligations at law, there are very limited cases where you may possibly be allowed to circumvent TPM in a lawful manner; however, you should preferably seek legal advice before doing so. It should also be noted that the very limited legal means for circumventing TPM do not generally apply in the case of content found on the internet or offered on demand.

10. What are copyright levies?

Copyright levies are generally understood to refer to a form of tax usually imposed on blank media for the purpose of giving copyright holders ‘fair compensation’ as part of the conditions for application of the legal exception relating to ‘private copying’ (an act permitted by law without leading to copyright infringement provided certain conditions are met). Although the private copying exception exists in Malta, there is presently no system to collect the levies mentioned.

11. Am I infringing copyright if I watch a movie by streaming it instead of downloading it from the internet?

Although the issue in Malta has not been tested by the courts, it can generally be argued that simply streaming a movie without permanently storing that content offline does not amount to an infringing act (especially if you are streaming from a lawful source). However, if you use software to download or otherwise copy that content without the authorisation of the copyright holder (or without a specific legal justification), you are infringing copyright. This would be regardless of whether the content you are downloading/reproducing is lawful or not. Consent of the copyright holder is usually provided by way of a licence.

12. If copyright-protected works are included into my posts automatically by social media platforms, am I responsible for this and is this a copyright infringement? What if I link to them or embed them in my own website or blog?

Regarding automatic posts, it must be said that the matter is not clear in Malta. However, unless you take an active role in the copyright infringement (e.g. by downloading/sharing or otherwise displaying to the public a work protected by copyright once it is automatically included in your post) it is very unlikely that you will be responsible under the Maltese Copyright Act for any infringement of copyright that may take place as a result of the automatic post. However, you may be responsible in terms of the Maltese Civil Code for any damage caused to the copyright proprietor (or other interested parties), depending on the extent of your acts and/or omissions (i.e. as a result of your fault). A good rule to follow to minimise this risk is to take any precautions to avoid the uploading/hosting of any content that has not been cleared by the copyright holder — especially when this is done without your consent as well (this can be controlled to a certain extent by tweaking various privacy or general settings on the social media platform in question). Should protected works be included automatically in any case, you should then exercise caution and evaluate whether to delete that content as soon as possible. You should also otherwise comply with any lawful requests made by the copyright holder(s) (e.g. if/when asked to remove/delete the infringing content) as soon as possible. These measures will help you to prove that you have acted prudently, diligently, and attentively and should help you overcome allegations of ‘fault’ on your part (and therefore argue against responsibility in terms of Maltese civil law).

As far as hyperlinks and embedded content are concerned, simply linking to a copyrighted work or embedding a copyrighted work (on websites/blogs, etc.) that is hosted elsewhere on the internet will not generally be deemed an act of copyright infringement. However, the link/embedded content must not circumvent any restrictions imposed by the copyright owner. For example, the link/embedded content must not be made available to a sector of the public that is restricted from viewing that content at the original source.

13. When I create a work and upload it online, terms and conditions of many sites ask for me to transfer my copyright to the site. Does that mean I lose all those rights in them for the future?

In Malta, when you create a work eligible for copyright, unless you are subject to any contract stating otherwise, you are generally automatically deemed by law to be the author and therefore, the copyright holder of that work (there are limited exceptions to this). As the owner of the work, you may choose to transfer your copyright in the work (by way of an assignment of rights) or else allow others to make use of that work (by way of a licence). When asked to ‘transfer’ your rights to a site, you would effectively be assigning your rights to such sites — provided there are all the necessary formalities in place for a valid assignment to take place. Your moral rights (including your right to be identified as the author) are not affected by any such transfer but your other rights of copyright (right to authorise/prohibit reproduction, distribution, communication to the public, etc.) may effectively be lost (depending on the terms and conditions in question). For this reason it is very important always to read all applicable terms and conditions carefully before uploading any content online.

14. My avatar is based on my favourite movie star, cartoon character or sports club. Can I get in trouble for infringement of copyright or any other legislation because of this?

This depends on the type of avatar you are using and the context you are using it in. If your avatar contains material that is substantially similar to the original source that is eligible for copyright protection (a company logo, a famous cartoon character, etc.) this may be tantamount to copyright infringement unless the matter is specifically exempted by law. In the case of sports clubs, avatars based on logos will in all probability amount to copyright infringement (since any depiction of the logo will in all likelihood contain 'substantial' parts of the original). If the sports club has registered the logo as a trade mark effective in Malta, there may also be trade mark infringement in certain cases.

The situation regarding fictional characters has not yet been resolved in Malta, although there is a strong argument to be made that these enjoy copyright protection as separate types of works (artistic works, audiovisual works, literary works, etc.) or even a combination thereof. Copyright infringement subsists when a substantial part of such character (e.g. the face of a cartoon character) is reproduced/distributed/displayed to the public, etc. — either in its original form OR in any form recognisably derived from the original. Even a crude drawing highlighting the key features of the original may amount to copyright infringement. There are limited exceptions to this general rule (e.g. arguing that the avatar is being used by way of caricature, pastiche or parody).

Regarding non-fictional characters, it is unlikely that using an avatar resembling a famous person will amount to copyright infringement, however, there are other laws that may apply — slander and defamation being among the most important. Of course, if your favourite movie star is being depicted in the avatar as one of the fictional roles he or she has portrayed, then that may give rise to copyright infringement claims (i.e. possible infringement of the rights in 'fictional characters').

15. How do I know whether a work is offered legally or illegally online?

Although there are no specific rules that will clearly determine whether a work is offered legally or illegally online, there are a number of factors that you should always keep in mind in this regard. The following are merely some examples:

Location of the source. If the work was acquired from a reputable online store (or retail outlet), the likelihood is that the work is lawful. Conversely, acquiring the work from unknown sources (digitally or otherwise) increases the risk of acquiring unlawful works. Websites with no terms and conditions or from which content may be acquired without restrictions should be evaluated very carefully.

Price. This is another good indicator of lawfulness. The cheaper the work, the higher the chances will be that the source is infringing. Works that are offered free of charge should be evaluated very carefully.

Quality. The quality of the work acquired is also a good indicator as to whether it is infringing or not. The worse the quality, the more likely it is to be infringing.

Other indicators. There may be other measures taken by the copyright owner/holder to help end-users determine whether or not the work in question is lawful. One may find holograms or other marks that are difficult to reproduce on physical media purchased online or from another source, which will help you determine whether the work is lawful or otherwise.

You should note that these are not infallible tests as to the lawfulness of the work in question but, taken as a whole, they may help you determine whether or not the work is indeed infringing or not.