

Designs and Copyright FAQs

What is Copyright?

Copyright is a property right whereby, and subject to legislation, the owner of the copyright work may undertake or authorise other persons to carry out certain acts in respect of the work.

Copyright protection does not extend to the ideas and principles which underlie any element of a work, procedures, methods of operation or mathematical concepts, and, in respect of original databases, shall not extend to their contents.

What is protected by Copyright?

- Literary, dramatic, musical or artistic works
- Sound recordings
- Films
- Broadcasts
- Cable Programmes
- Typographical arrangements of published editions
- Original databases
- Computer programs

What is restricted by Copyright?

Subject to the exceptions mentioned later, the owner of the copyright in a work has the exclusive right to undertake, or authorise others to undertake all or any of the following acts

- to copy the work,
- to make the work available to the public,
- to make an adaptation of the work.

These acts are known as acts restricted by copyright, and the undertaking of any of these acts by a third party without the consent of the copyright owner amounts to infringement.

Who is the Owner of the Copyright?

The author of a work is the first owner of the copyright unless

- the work is made by an employee in the course of employment, in which case the employer is the first owner of any copyright in the work, subject to any agreement to the contrary
- the work is subject of Government copyright
- the work is subject of the copyright of a prescribed international organisation
- the copyright in the work is conferred on some other person by legislation

Who is the Author?

This means the person who creates the work and includes

- in the case of a sound recording, the producer;
- in the case of a film, the producer and the principal director
- in the case of a broadcast, the person making the broadcast or in the case of a broadcast which relays another broadcast by reception and immediate retransmission, without alteration, the person making that other broadcast
- in the case of a cable programme, the person providing the cable programme service in which the programme is included
- in the case of a typographical arrangement of a published edition, the publisher
- in the case of a work which is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken
- in the case of an original database, the individual or group of individuals who made the database and
- in the case of a photograph, the photographer

Who is a Qualifying Person?

A work qualifies for copyright protection where the author is a qualifying person. A qualifying person includes:

- A citizen of the state, or a citizen or subject of, or an individual domiciled or ordinarily resident in a country, territory, state in respect of which the Government has made an order extending the provisions of this copyright legislation
- a national or foreign body corporate again subject to the proviso outlined above
- a national or foreign partnership or unincorporated body subject to foregoing proviso
- any other national or foreign body, again subject to the foregoing proviso.

What about Moral Rights?

The author of a work has the right to be identified as the author and that right applies to an adaptation of the work which is known as the paternity right.

There are numerous qualifications and exceptions to the application of the paternity right, and these include:

the inclusion of the work in an incidental manner in another work,

acts done for purposes of instruction or examination,

acts done in parliamentary and judicial proceedings,

anything done by or with the authority of the copyright owner where the copyright in the work originally vested in an employer,

where the work was made for the purpose of:

- reporting current events,
- a newspaper or periodical,
- an encyclopaedia, dictionary, yearbook or other collective work of reference,

a work in which Government copyright subsists,

a work in which the copyright originally vested in a prescribed international organisation.

Subject to certain exceptions and qualifications, the author of a work has the right to object to any distortion, mutilation or other modification of, or other derogatory action in relation to the work which would prejudice his or her reputation. This right is known as the integrity right.

The paternity and integrity rights are incapable of assignment or alienation but may be waived.

Other moral rights are the right not to have a work falsely attributed to a person as the author and the right to privacy in photographs and films where they are commissioned for private and domestic purposes.

Do I have to register Copyright?

No, it is not necessary to register copyright in a work in Ireland as copyright subsists automatically.

Is a Copyright Notice required?

No, a copyright notice is not required. However, it is recommended that notification that copyright subsists be given. This may be achieved by the following marking:-

© Name of owner/year of publication

Duration of Copyright

Type of Work	Term
Literary, Dramatic, Musical, Artistic	70 years after the death of the author
Film	70 years after the last of the following people die: the Principal Director the author of the screenplay the author of the dialogue the author of the music specifically composed for use in the film.
Sound Recording	50 years after sound recording is made
Computer Generated Work	70 years after the date on which the work is first lawfully made available to the public

What is the difference between Copyright and a Design Right?

It is the purpose of the applicable legislation to differentiate insofar as it is possible to do, between "Artistic Works" protectable by Copyright and the design of a product.

An artistic work may be protected both by Copyright and by a Design Right which may be registered or unregistered. The best illustrative example, although not the only, is where the design consists of surface decoration.

In Ireland, it is not an infringement of the copyright in a two dimensional work to make a three dimensional object if:

- the object would not appear, to a person who is not an expert in relation to such objects, to be a reproduction of the two dimensional work; or
- the lines, contours, colours, shape, texture and materials of the product or its ornamentation are wholly or substantially functional and more than 50 such objects have been manufactured and made commercially available by or with the consent the owner of the copyright, with the exception that this does not apply to a work relating to a work of architecture.

In the UK, where such a design is applied to a product by an industrial process, the copyright is not effective against a third party who copies the product after 25 years from the year the product was first placed on the market. In addition, it is not an infringement of the copyright in a design document or model recording or embodying a design for anything other than an artistic work (or typeface) by making or copying a product disclosed in the design document or model.

What is an Industrial Design?

An industrial design is the ornamental or aesthetic aspect of an article. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two-dimensional features, such as patterns, lines or color.

Industrial designs are applied to a wide variety of products of industry and handicraft: from technical and medical instruments to watches, jewelry, and other luxury items; from housewares and electrical appliances to vehicles and architectural structures; from textile designs to leisure goods.

To be protected under most [national laws](#), an industrial design must appeal to the eye. This means that an industrial design is primarily of an aesthetic nature, and does not protect any technical features of the article to which it is applied.

Why protect Industrial Designs?

Industrial designs are what make an article attractive and appealing; hence, they add to the commercial value of a product and increase its marketability.

When an industrial design is protected, the owner - the person or entity that has registered the design - is assured an exclusive right against unauthorized copying or imitation of the design by third parties. This helps to ensure a fair return on investment. An effective system of protection also benefits consumers and the public at large, by promoting fair competition and honest trade practices, encouraging creativity, and promoting more aesthetically attractive products.

Protecting industrial designs helps economic development, by encouraging creativity in the industrial and manufacturing sectors, as well as in traditional arts and crafts. They contribute to the expansion of commercial activities and the export of national products.

Industrial designs can be relatively simple and inexpensive to develop and protect. They are reasonably accessible to small and medium-sized enterprises as well as to individual artists and craftsmen, in both industrialized and developing countries.

How can Industrial Designs be protected?

In most countries, an industrial design must be registered in order to be protected under industrial design law. As a general rule, to be registrable, the design must be "new" or "original". Different countries have varying definitions of such terms, as well as variations in the registration process itself. Generally, "new" means that no identical or very similar design is known to have existed before. Once a design is registered, a registration certificate is issued. Following that, the term of protection is generally five years, with the possibility of further periods of renewal up to, in most cases, 15 years.

Depending on the particular national law and the kind of design, an industrial design may also be protected as a work of art under copyright law. In some countries, industrial design and copyright protection can exist concurrently. In other countries, they are mutually exclusive: once the owner chooses one kind of protection, he can no longer invoke the other.

Under certain circumstances an industrial design may also be protectable under unfair competition law, although the conditions of protection and the rights and remedies ensured can be significantly different.

How extensive is Industrial Design Protection?

Generally, and with the notable exception of the [Community Design](#), industrial design protection is limited to the country in which protection is granted. Under the Hague Agreement Concerning the International Deposit of Industrial Designs, a WIPO-administered treaty, a procedure for an international registration is offered. An applicant can file a single international deposit either with WIPO or the national office of a

country which is party to the treaty. The design will then be protected in as many member countries of the treaty as the applicant wishes.

Please Note

While this guide has covered several topics, it is intended as a very basic introduction to Designs and Copyright, and certain procedures surrounding them, and as such, it is no substitute for consulting with a qualified attorney.

If you have any further questions please [contact us](#).

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