



TERRALEX®

CROSS-BORDER COPYRIGHT GUIDE 2018



Norway

Advokatfirmaet Hjort DA, Monica Syrdal



1. Legislation and regulation

1.1 What are the main sources of copyright law?

The main source of copyright legislation in Norway is the Copyright Act of 1961, as later amended.

In addition to the wording of the Act, case law and the Ministry's preparatory work in respect of the Act and amendments thereto are also relevant sources when interpreting the law.

A proposal for a new Copyright Act was presented to the public in March 2016 and has been subject to extensive hearings and much debate. The purpose of the proposal was to modernise the legislation, but the Ministry has also proposed certain changes to the Act with the aim of strengthening the protection of the rights holders. A new Copyright Act may be expected in 2018 (see 7 below).

As a member of the European Economic Area (EEA), Norway is part of the EU internal market with respect to copyright issues. The EU Directives and Regulations relating to copyright are thus implemented (through the EEA Agreement) in Norwegian law. European Union legislation and jurisprudence from the European Court of Justice are therefore relevant sources of law in respect of

the interpretation and application of Norwegian legislation. Norwegian courts can refer questions of law relating to the interpretation of EU/EEA copyright legislation to the EFTA Court.

2. Subsistence of copyright

2.1 What type of works can be protected by copyright?

According to the Copyright Act, copyright shall apply to all literary, scientific or artistic works of any kind, irrespective of the manner or form of expression. The Act lists the following examples of work protected by copyright:

- writings of all kinds
- oral lectures
- works for stage performance, dramatic and musical, as well as choreography and pantomime; radio plays
- musical works, with or without words
- cinematographic works
- photographic works
- paintings, drawings, graphic and similar pictorial works
- sculpture of all kinds
- architectural works, drawings and models, as well as the building itself
- articles of artistic handicraft and applied art (the prototype as well as the work itself)
- maps, drawings and graphic and three-dimensional representations or portrayals of a scientific or technical nature
- computer programs
- translations and adaptations of the above-mentioned works.

2.2 What is required for works to qualify for copyright protection?

A work may be protected by copyright if it is the result of an individual creative effort, requiring a minimum of individuality or originality of the work. It is not a requisite that the work has a certain artistic merit or quality. In general, the threshold for copyright protection can be considered as fairly low in Norway.

Norway provides copyright protection if the author is a Norwegian national or a person who is resident in Norway, or if the work was first published in Norway.

As a general rule, Norwegian copyright law also extends its protection to nationals from a state which is a signatory to one of the various international conventions which Norway is a party to on the condition that such state extends similar protection to Norwegian works as it does to works originating in its own country.

2.3 What rights does copyright grant to the rights holder?

The Copyright Act grants the rights holder the exclusive rights (before any licences are granted) to:

- produce copies of the work
- make the work available to the public (both in its original form and in an altered form) by distributing copies to the public, display the copies publicly or perform the work publicly.

The above described rights also include the right to lend or rent the work to the public and to make adaptations of the work. Rights holders also have the moral rights described in 2.4.

2.4 Are moral rights protected (for example, rights to be identified as an author of a work or to object to derogatory treatment of a work)?

In Norway, the Copyright Act provides the following moral rights:

- the right to have the author's name stated in such manner as required by proper usage
- the right to object to alterations of a work or to making the work available in a manner or in a context prejudicial to the author's literary, scientific or artistic reputation or to his individuality, or prejudicial to the reputation or individuality of the work itself

Moral rights are applicable to all kinds of work that might be protected by copyright. The rights may not be waived by the author, unless the use of the work in question is of limited nature and extent.

2.5 What is the duration of copyright in protected works?

The duration of protection for copyright works varies according to the type of work and the date of creation. In general, the duration of copyright protection is as follows:

Category of work
Works protected by copyright (authors' rights)
Duration
Copyright expires 70 years from the end of the calendar year in which the author dies.
Where a work has a joint author/co-author, the duration is 70 years from the end of the calendar year in which the last known author dies.

Where the author's identity is unknown, copyright expires 70 years from the end of the calendar year in which the work was created or made available to the public.
Category of work
Performing artists
Duration
Rights expire 50 years from the end of the calendar year in which the performance took place.
Category of work
Producers of sound recordings and film
Duration
Rights expire 50 years from the end of the calendar year in which the recording is made or, if the recording is published later, 50 years from the end of the calendar year in which it was first published.
Category of work
Films
Duration
For films, copyright expires 70 years after the end of the calendar year when the last of the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic work, dies.
Category of work
Broadcasts
Duration
Rights expire 50 years from the end of the calendar year in which the broadcast was made.
Category of work
Photographs that are not protected by copyright
Duration
Rights expire 15 years from the end of the calendar year in which the photographer dies.

2.5 For how long do moral rights subsist in copyright works?

An author's moral rights subsist for the duration of the copyright.

After the death of the author, and regardless of whether the term of protection of copyright has expired, the Ministry of Culture may prohibit that a work is made available to the public in a manner or in a context which is prejudicial to the author's literary, scientific or artistic reputation or individuality. The same applies to use that violates the reputation or individuality of the work itself, or which may otherwise be considered harmful to general cultural interests. This provision is rarely used.

3. Ownership

3.1 Who is the first owner of a copyright work?

As a general rule, the first owner of the copyright is the creator of the work, which is always a natural person. Copyright cannot originate in a legal person.

If the work is created by an employee in the course of his/her employment, copyright is presumed to have been transferred to the employer to the extent necessary to fulfil the purpose of the employment contract, taking into account the normal business operations of the employer at the time. Moral rights remain with the original author.

In respect of computer programs, the Copyright Act presumes that copyright in a computer program which is created by an employee as part of the execution of duties for which he/she is employed or in accordance with the instructions of their employer is transferred to the employer unless otherwise agreed.

3.2 Can copyright in a work be jointly owned? If so, what are the rights of a co-owner?

Copyright in a work can be jointly owned by two or more persons. This can occur where a work is created by more than one person and where the parties' contributions cannot be distinguished as separate works. Copyright can, in principle, also be jointly owned in the case of assignment of rights.

For the initial publication of a jointly owned work, consent of all authors must be given. The same applies to the publishing of such work in a different manner or in another form than previously. Each of the authors may, however, consent to a new publishing of the work in the same manner as it has previously been published.

Each of the authors may also pursue actions for infringement.

3.3 Can you register copyright? If so, what are the benefits of such registration and what other steps, if any, can you take to help you bring an infringement action?

Copyright is an unregistered right in Norway; it arises automatically upon creation of the work. There is no registration system for copyright in Norway.

3.4 What steps should you take to validly transfer, assign or license copyright?

There are no formal requirements as to how to assign, transfer or license copyright. While oral or implied agreements are in principle valid, a written and signed agreement is advisable. Unclear copyright contracts where natural persons are original rights holders are generally interpreted in favour such natural persons.

3.5 Can moral rights be transferred, assigned or licensed?

Moral rights may not be transferred, assigned or licensed. Moral rights may only be waived by the author if the use of the work in question is of limited nature and extent.

4. Infringement

Authors can take legal action if any of their rights have been infringed.

Norwegian copyright legislation does not distinguish between primary and secondary infringement.

4.1 What acts constitute infringement of copyright?

An infringement occurs when a protected work is copied or made available (as described in 2.3) without the consent of the author. This can include acts such as physical or digital copying, making the work available to the public in physical or digital form, performing the work to the public or adapting the work etc.

4.2 What acts are permitted with respect to copyright works (ie what exceptions apply)?

There are a number of acts that can be carried out in relation to copyright works despite the fact that they might be protected by copyright. Permitted acts include (amongst others):

Act
Making of temporary copies
Description
This includes making copies that are of transient or incidental nature and which: <ul style="list-style-type: none"> • are an integral and essential part of a technological process • have the sole purpose of enabling a transmission of the work in a network between third parties by an intermediary, or • have no independent economic significance.
Act
Copies for private use
Description
The making of copies of a published work for private use, provided this is not done for purposes that are of a commercial nature. The exception does not confer a right to: <ul style="list-style-type: none"> • copy an architectural work through the construction of a building • make machine-readable copies of computer programs or of databases in machine-readable form • make copies of works of art by means of photocopying if the copy may be perceived as the original

- take a cast or impression or by other similar means of reproduction if the copy may be perceived as an original.

Further, the exception does not confer a right to engage third-party assistance in the reproduction of musical works, cinematographic works, sculpture, pictorial weavings and articles of artistic handicraft and applied art, or the artistic reproduction of other works of art.

Act

Educational purposes

Description

Teachers and pupils may make fixations of their own performances of works for educational use. A published work may be performed publicly at religious ceremonies and in an educational context.

Act

People with disabilities

Description

Certain rights of copying of literary, scientific and musical works to enable access for people with disabilities.

Act

Quotation

Description

A published work may be quoted, in accordance with proper usage and to the extent necessary to achieve the desired purpose.

Act

Parody

Description

There is no specific statutory provision governing parody, but parodies are generally considered as independent works.

4.3 Is it permissible to provide a hyperlink to, or frame, a work protected by copyright? If so, in what circumstances?

Norwegian courts have in previous case law held that hyperlinking does not involve an act of copying and thus is not a copyright infringement in itself, but that hyperlinking to illegal content may involve so-called accomplice liability in respect of such illegal uploading of the material to the internet.

5. Remedies

While the actual end result in terms of legality is not that different, the Norwegian courts have thus followed a different line of legal argument than what the CJEU has done in *Nils Svensson v Retriever Sverige* (C-466/12) (which introduced 'new public' as a new criterion in relation to Norwegian law) and later on in *BestWater* C-348/13 and *GS Media* (C-160/15). While it is not clear exactly how Norwegian courts will combine their previous jurisprudence with the CJEU's clarifications on EU/EEA law, Norwegian courts are, in our opinion, likely to follow the guidelines given by the CJEU.

See also section 7.

4.4 Is a licensee of copyright able to bring an infringement action?

A licensee's authority to bring an infringement action depends on the type of licence involved and an interpretation of the licence agreement. Exclusive licensees are more likely to be in a position to bring an infringement action.

5.1 What remedies are available against a copyright infringer?

Rights holders have the right to *inter alia* the following remedies:

- interim injunctions
- delivery up of infringing articles
- seizure of infringing articles
- forfeiture of infringing articles
- to elect between damages in the form of compensation of economic loss or profits arising from the infringement.

5.2 Are there any specific remedies for online copyright infringement?

Rights holders can seek an injunction from the court ordering the internet service provider (ISP) to disclose information about the identity of the provider of the infringing service or material.

Where it is evident that a website is, to a large extent, displaying infringing material, rights holders can also seek an injunction from the court ordering the ISP to block the website.

5.3 Under what circumstances is copyright infringement a criminal act and what sanctions may apply?

Most copyright infringements can amount to a criminal act provided that the offending act is carried out with (criminal) intent or negligence. The public prosecutor with the police decides whether criminal charges shall be brought against a potential infringer. The police will not act unless rights holders bring specific matters to their attention.

The sanction for committing a criminal offence in relation to copyright is a fine or imprisonment for a term not exceeding three months. If the infringement is wilful, and has been committed under particularly aggravating circumstances, the penalty shall be fines or imprisonment for a term not exceeding three years.

A corporation may be held criminally liable for a violation committed by a person acting on behalf of the company.

6. Enforcement

5.4 Is there a time limit for bringing a copyright infringement claim?

There is no time limit to bring a claim for breach of copyright. However, a monetary claim for compensation may be time barred after three years according to the Norwegian Act of limitation of claims. With regard to a non-contractual claim for damages, the time begins to run from the date the injured party gained or should have gained necessary knowledge of the claim and of the debtor.

5.5 Can legal (or any other) costs be recovered in an action for copyright infringement? If so, what percentage of costs will typically be recovered by the successful party?

In Norway, the main rule is that the losing party pays what the court decides are the necessary legal costs of the successful party. It is subject to the discretion of the court to decide what costs are necessary, depending on, amongst other things, the nature and complexity of the case, hours spent and the amount involved. The court may also decide to exempt the opposite party from liability for legal costs in whole or in part if the court finds that weighty grounds justify exemption.

For claims worth up to NOK125,000, compensation for legal costs is limited to 20% of the amount in dispute, and never more than NOK25,000.

6.1 What courts can you bring a copyright infringement action in, and, what monetary thresholds, if any, apply?

Copyright claims are filed before the ordinary Norwegian courts.

The courts have a small claims track for claims worth up to NOK125,000.

6.2 Are there any other ways in which you can enforce copyright?

Seizure

A copyright holder may request seizure by the Norwegian Customs authorities in the case of infringing copies being imported into Norway.

Criminal proceedings

A copyright infringement can be reported to the police. The police prosecutor will decide whether criminal proceedings shall be pursued through the courts.

6.3 What agency bodies are responsible for promoting and/or enforcing copyright and what do they do?

The Norwegian Ministry of Culture is the official government body responsible for copyright regulation in Norway.

There are no agency bodies that actively enforce copyright. The Norwegian police are responsible for any criminal charges in relation to copyright infringement (see 5.3 above).

6.4 What are the main collective rights management agencies that operate in your jurisdiction and who do they represent?

To use copyright material without infringing copyright necessitates consent from the rights holder.

As a result of the practical difficulties and administrative burden for copyright owners in granting licences individually to all those seeking them, many copyright holders participate in collection schemes by signing up as members of the collecting societies. Once members, they may transfer rights to the collecting society, which then administers the rights for them, or appoint the society as their agent. Other organisations only provide recommended terms and conditions for their members, but do not license rights on their members' behalf.

There are more than 35 organisations representing rights holders in Norway, including collecting societies. The most important organisations/societies are as follows:

Agency
Gramo
Who it represents
Performing artists' and phonogram producers' rights in relation to sound recordings
Agency
TONO
Who it represents
Music composers and authors of lyrics
Agency
NCB
Who it represents
Mechanical reproduction rights for music composers and authors of lyrics
Agency
Fondet for utøvende Kunstnere (FFUK)
Who it represents
FFUK is a fund that collects levies for use of certain performances not protected by copyright
Agency
BONO
Who it represents
Visual artists
Agency
Norwaco
Who it represents
Broadcasting retransmission rights
Agency
Kopinor
Who it represents
Authors and publishers for copying purposes
Agency
Den norske forfatterforening
Who it represents
Writers

Agency
IFPI
Who it represents
International music producers
Agency
Directors Guild of Norway
Who it represents
Directors
Agency
Norsk Filmforbund
Who it represents
Film workers, including directors, actors, cameramen etc

6.5 Are copyright levies payable? By whom, and in what circumstances?

Copyright levies are not payable in Norway. For private copying, the authors receive compensation through annual grants via the State's annual budget.

7. Copyright reform

7.1 What do you consider to be the top recent copyright developments?

The most important copyright development in Norway is the proposal for a new Copyright Act. The aim of the proposal is to modernise the existing Act from 1961 and make it more accessible to the public.

The Ministry of Culture has proposed some changes that have caused much controversy between rights holders and users of rights, such as broadcasters and other media companies, distributors etc. The majority of the proposed changes are favourable to rights holders. Users claim that the proposal shifts the balance between the parties to an unreasonable extent and that the proposal (if implemented) will reduce investment initiatives in the sector to the detriment of both individual rights holders and professional media companies.

The proposed material changes to the Act include *inter alia*:

- new principles for contract interpretation of copyright licences and other copyright agreements that favour the rights holder and deviate from general Norwegian contract principles
- new principles for the burden of proof in copyright disputes that deviate from general Norwegian dispute law principles
- introduction of statutory provisions regarding transfer of rights in employment relationships
- introduction of a right of termination if licensed rights have not been exercised by the licensee after three years
- introduction of a new extended collective licence for audiovisual rights
- introduction of statutory provisions regarding rights holders' right to reasonable remuneration
- harmonising the sanctions for copyright infringement with the sanctions applicable to industrial IPR, hereunder a right of 'double' compensation for certain copyright infringements.

News media entities have also expressed strong objections to several minor changes on, for example, quotations, use of pictures in relation to media coverage, certain limitations to the private use exception etc, which they claim will limit the constitutional rights to information and freedom of expression.

A proposal for the new Copyright Act was presented to the Norwegian Parliament in spring 2017. Due to the controversy and debate following the proposal, Parliament eventually decided that it was not ready to vote on it before the general election that was held later that year. Parliament is expected to pass a new Copyright Act in 2018.

© RPC, or the relevant contributors, 2018

*The information contained in this publication is a general guide and is not a substitute for specific legal advice.
No responsibility is accepted for any errors or omissions.*