

## CHAPTER 196

### COPYRIGHT ACT

*To make new provision in respect of copyright and related matters, in substitution for the provisions of the Copyright Act, 1911.*

1st January, 1970

*ACT VI of 1967 as amended by Act LVIII of 1974; Legal Notice 148 of 1975; and Acts: XI of 1977, XIII of 1983, VIII of 1990, XX of 1992, XXIV of 1995 and XVII of 1999.*

1. The title of this Act is Copyright Act.

Title.

2. (1) In this Act, unless the context otherwise requires -

Interpretation.  
*Amended by:*  
*XI. 1977.2;*  
*XX. 1992.2;*  
*XVII.1999.7.*

"artistic work" means, irrespective of artistic quality, any of the following, or works similar thereto:

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
- (b) maps, plans and diagrams;
- (c) works of sculpture;
- (d) photographs not comprised in a cinematograph film;
- (e) works of architecture in the form of buildings or models; and
- (f) works of artistic craftsmanship, including pictorial woven tissues and articles of applied handicraft and industrial art;

"author", in the case of a cinematograph film or sound recording, means the person by whom the arrangements for the making of the film or recording were undertaken, and, in the case of a broadcast transmitted from within any country, means the person by whom the arrangements for the making of the transmission from within that country were undertaken;

"Board" means the Copyright Board established under article 17 of this Act;

"body of persons" means any company or association of persons whether corporate or unincorporate, whether vested with legal personality or not;

"broadcast" means broadcast by wireless telegraphy or wire or both but does not include a rebroadcast, and "broadcasting" shall be construed accordingly;

"broadcasting authority" means the Broadcasting Authority established by article 118 of the Constitution of Malta and any other broadcaster whether licensed under the Broadcasting Act, or any other law of Malta, and includes a broadcasting contractor operating in Malta;

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"building" includes any structure;

"cinematograph film" means the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a soundtrack associated with the cinematograph film;

"communication to the public" includes, in addition to any public live performance or delivery, any mode of public visual or acoustic presentation, but does not include a broadcast or rebroadcast, and "communicate to the public" shall be construed accordingly;

"copy" means a reproduction in written or graphic form, in the form of a recording or cinematograph film, or in any other material form, so however that an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

"copyright" means copyright under this Act;

"lawful" means done in compliance with the provisions of this Act, and "lawfully" shall be construed accordingly;

"licence" means a lawfully granted licence permitting the doing of an act controlled by copyright;

"literary work" means, irrespective of literary quality, any of the following, or works similar thereto:

- (a) novels, stories and poetical works;
- (b) plays, stage directions, choreographic works or entertainments in dumb show, film scenarios and broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopaedias and dictionaries;
- (e) letters, reports and memoranda;
- (f) lectures, addresses and sermons;
- (g) computer software;

but, subject and without prejudice to the Statute Law Revision Act, 1980, shall not include any written law, law report or judicial decisions;

"Malta" shall have the same meaning as assigned to it by article 124 of the Constitution of Malta;

"Minister" means the Minister responsible for trade and includes, to the extent of the authority given, any person authorized by the Minister in that behalf for any purpose of this Act;

"musical work" means any musical work, irrespective of musical quality, and includes works composed for musical accompaniment;

"owner of copyright" means the first owner, an assignee or an exclusive licensee, as the case may be, of a copyright;

"person" includes a body of persons;

"prescribed" means prescribed by regulations made under article 16 of this Act;

"rebroadcast" means simultaneous or subsequent broadcast by a

broadcasting authority of the broadcast of any broadcasting station not under its control, whether situated in Malta or abroad, and includes diffusion of such broadcast over wires, and "rebroadcasting" shall be construed accordingly:

Provided that "later rebroadcast" shall mean only any such subsequent broadcast and "later rebroadcasting" shall be construed accordingly;

"reproduction" means the making of one or more copies of a literary, musical or artistic work, cinematograph film or sound recording;

"sound recording" means the first fixation of a sequence of sounds capable of being perceived aurally and of being reproduced, but does not include a soundtrack associated with a cinematograph film;

"work" includes translations, adaptations, new versions or arrangements of pre-existing works, and anthologies or collections of works which, by reason of the selection and arrangement of their content, present an original character;

"work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

(2) For the purposes of this Act the following provisions shall apply with respect to publication:

- (a) a work shall be deemed to have been published if copies thereof have been made available in a manner sufficient to render the work accessible to the public;
- (b) where in the first instance a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work;
- (c) a publication in any country shall be treated as being a first publication notwithstanding that there has been an earlier first publication elsewhere, if the two publications took place within a period of not more than thirty days.

3. (1) Subject to the provisions of this article the following works shall be eligible for copyright: Works eligible for copyright.

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) cinematograph films;
- (e) sound recordings;
- (f) broadcasts.

(2) A literary, musical or artistic work shall not be eligible for copyright unless -

- (a) sufficient effort has been expended on making the

work to give it an original character; and

(b) the work has been written down, recorded or otherwise reduced to material form.

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(3) A design or model of manufacture eligible for copyright under this Act shall not, by registration under the Industrial Property (Protection) Ordinance, acquire a term of copyright beyond that specified under sub-article (2) of article 4 of this Act.

(4) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

Copyright by virtue of nationality or domicile.

**4.** (1) Copyright shall be conferred by this article on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the joint authors is, at the time when the work is made, a qualified person, that is to say -

(a) an individual who is a citizen of, or is domiciled in, Malta; or

(b) a body of persons constituted and vested with legal personality under the laws of Malta and established in Malta or a commercial partnership registered in Malta in accordance with the provisions of the Commercial Partnerships Ordinance.

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(2) The terms of copyright conferred by this article shall be calculated according to the following table:

TABLE

<i>Type of Work</i>	<i>Date of Expiration of Copyright</i>
(i) Literary, musical or artistic works other than photographs	Twenty-five years after the end of the year in which the author dies.
(ii) Cinematograph films and photographs	Twenty-five years after the end of the year in which the work was first made accessible to the public by the owner of the copyright therein.
(iii) Sound recordings	Twenty-five years after the end of the year in which the recording was made.
(iv) Broadcasts	Twenty-five years after the end of the year in which the broadcast took place.

(3) In the case of an anonymous or pseudonymous literary, musical or artistic work whose term of copyright is established under paragraph (i) of the last preceding sub-article the copyright therein shall subsist until the end of the expiration of twenty-five years from the end of the year in which it was first published:

Provided that in the event of the identity of the author becoming known the terms of copyright shall be calculated in accordance with the provisions of paragraph (i) of the last preceding sub-article.

(4) In the case of a work of joint authorship, reference in the preceding table to the death of the author shall be deemed to refer to the joint author who dies last, whether or not he is a qualified person.

**5.** (1) Copyright shall be conferred by this article on every work, other than a broadcast, which is eligible for copyright and which -

Copyright by reference to country of origin.

(a) being a literary, musical or artistic work or a cinematograph film, is first published in Malta, or

(b) being a sound recording, is made in Malta,

and which has not been the subject of copyright conferred by article 4 of this Act.

(2) Copyright conferred on a work by this article shall have the same duration as is provided for in article 4 of this Act in relation to the same type of work.

**6.** (1) Copyright shall be conferred by this article on every work which is eligible for copyright and which is made by or under the direction or control of the Government and also such international bodies or other governmental organizations as may be prescribed.

Copyright in works of Government and international bodies.

(2) Copyright conferred by this article on a literary, musical or artistic work, other than a photograph, shall subsist until the end of the expiration of twenty-five years from the end of the year in which the work was first published.

(3) Copyright conferred by this article on a film, photograph, sound recording or broadcast shall have the same duration as is provided for by article 4 of this Act in relation to the same type of work.

(4) Articles 4 and 5 of this Act shall not be deemed to confer copyright on works to which this article applies.

**7.** (1) Copyright in a literary, musical or artistic work or in a cinematograph film shall be the exclusive right to control the doing in Malta of any of the following acts, namely the reproduction in any material form, the communication to the public, the broadcasting or later rebroadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original:

Nature of copyright in literary, musical or artistic works and cinematograph films.

Provided that copyright in any such work shall not include the right to control -

(a) the doing of any of the aforesaid acts by way of fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, provided that, if such use is public, it is accompanied by an

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- acknowledgement of the title of the work and its authorship, except where the work is incidentally included in a broadcast or rebroadcast;
- (b) the doing of any of the aforesaid acts by way of parody, pastiche or caricature;
  - (c) the inclusion in a film, broadcast or rebroadcast of any artistic work situated in a place where it can be viewed by the public;
  - (d) the reproduction and distribution of copies of any artistic work permanently situated in a place where it can be viewed by the public;
  - (e) the incidental inclusion of an artistic work in a film, broadcast or rebroadcast;
  - (f) the inclusion in a collection of literary or musical works of excerpts from any such work, provided that not more than two excerpts of the works of the same author shall be used in the same collection and that the collection is designed for use in any school or university and includes an acknowledgement of the title and authorship of the work;
  - (g) the inclusion of a work in a school broadcast or rebroadcast;
  - (h) any use made of a work in any school or university for the educational purposes of that school or university, subject to the condition that, if a reproduction is made for any such purpose, it shall be destroyed before the end of the period of twelve calendar months after it was made;
  - (i) the making of a sound recording of a literary or musical work, as well as the reproduction of such sound recording by the maker or under licence from him, provided that the copies thereof are intended for retail sale in Malta and that such work has already been previously recorded under licence from the owner of the relevant copyright, whether in Malta or abroad, subject to such conditions and to the payment of such compensation as the Minister may prescribe;
  - (j) the reading or recitation in public by a person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgement;
  - (k) any use made of a work, other than its reproduction in any material form, by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific institutions as may be prescribed, where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used;
  - (l) the reproduction of a work by or under the direction or

control of a broadcasting authority where such reproduction or any copies thereof are intended exclusively for a lawful broadcast or rebroadcast and are destroyed before the end of the period of six calendar months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting authority and the owner of the relevant copyright in the work:

Provided that any reproduction of a work made under this paragraph may, if it is of an exceptional documentary character, be preserved in the archives of the broadcasting authority, but shall not be used for broadcasting, rebroadcasting or for any other purpose without the consent of the owner of the relevant copyright in the work;

- (m) the broadcasting or rebroadcasting of a work already lawfully made accessible to the public with which no licensing body referred to under article 15 of this Act is concerned, subject to the condition that, saving the provisions of this article, the owner of the broadcasting right in the work receives a fair compensation which shall be determined, in the absence of agreement, by the Board;
- (n) the communication to the public of a work, in a place where no admission fee is charged in respect of such communication, by any club whose aim is not profit-making;
- (o) any use made of a work for the purpose of a judicial proceeding or of any report of any such proceeding.

(2) Copyright in a work of architecture shall also include the exclusive right to control 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 recognisably derived from the original:

Provided that the copyright in any such work shall not include the right to control the reconstruction, in the same style as the original, of a building to which that copyright relates.

**8.** (1) Where the owner of the copyright in any literary, musical or artistic work authorizes a person to incorporate the work in a cinematograph film and a broadcasting authority broadcasts or later rebroadcasts the film, it shall, in the absence of any express agreement to the contrary between such owner and person, be deemed that the owner of the copyright authorized such broadcast or later rebroadcast.

Broadcasting of works incorporated in a cinematograph film.

(2) Notwithstanding the provisions of sub-article (1) of this article where a broadcasting authority broadcasts or later rebroadcasts a cinematograph film in which a musical work is incorporated, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority.

(3) In the absence of agreement on the compensation payable under the last preceding sub-article the amount of such compensation shall be determined by the Board.

Nature of  
copyright in sound  
recordings.

**9.** Copyright in a sound recording shall be the exclusive right to control in Malta the direct or indirect reproduction of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original:

Provided that the provisions of paragraphs (a), (h), (k), (l) and (o) of the proviso to sub-article (1) of article 7 of this Act shall apply to the copyright in a sound recording in like manner as they apply to copyright in a literary, musical or artistic work or in a cinematograph film.

Nature of  
copyright in  
broadcasts.

**10.** Copyright in a broadcast shall be the exclusive right to control the doing in Malta of any of the following acts, namely, the recording and the rebroadcasting of the whole or a substantial part of the broadcast and the communication to the public, in places where an admission fee is charged, of the whole or a substantial part of a television broadcast, either in its original form or in any form recognizably derived from the original:

Provided that -

- (a) the provisions of paragraphs (a), (h), (k) and (o) of the proviso to sub-article (1) of article 7 of this Act shall apply to the copyright in a broadcast in like manner as they apply to copyright in a literary, musical or artistic work or a cinematograph film;
- (b) the copyright in a television broadcast shall include the right to control the taking of still photographs from such broadcasts or any rebroadcasts thereof.

First ownership of  
copyright.

**11.** (1) Copyright conferred by articles 4 and 5 of this Act shall vest initially in the author:

Provided that where a work -

- (a) is commissioned by a person who is not the author's employer under a contract of service or agreement of apprenticeship, or
- (b) not having been so commissioned, is made in the course of the author's employment,

the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting such transfer.

(2) Copyright conferred by article 6 of this Act shall vest initially in the Government or such international bodies or other governmental organizations as may be prescribed, and not in the author.

(3) Subject to the provision of the last preceding sub-article -

- (a) the name on a work purporting to be the name of its author shall be considered as such, unless the contrary



is proved;

- (b) in the case of an anonymous or pseudonymous work, the publisher whose name is indicated in the work as such shall be deemed to be, unless the contrary is proved, the legal representative of the anonymous or pseudonymous author and shall be entitled to exercise and protect the rights belonging to the author under this Act.

**12.** (1) Subject to the provisions of this article, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law, as movable property.

Assignments and licences.

(2) An assignment or testamentary disposition of copyright may be limited so as to apply to some only of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the period of the copyright, or to a specified country or other geographical area.

(3) No assignment of copyright and no licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing:

Provided that a licence to communicate to the public any work which is subject to copyright may be oral or may be inferred from conduct.

(4) An assignment or licence of copyright granted by a joint author shall have effect as if granted by the other joint authors:

Provided that, where any other joint author is not satisfied with the terms on which such assignment or licence has been granted, he may, within three months from the day on which the said terms have been communicated in writing to him, apply to the Board for the determination by it of such terms as the Board may consider fair and reasonable.

(5) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work or an existing work in which copyright does not yet subsist, and the prospective copyright in any such work shall be transmissible as movable property:

Provided that such assignment or licence shall not be deemed to include a copyright which in terms of sub-article (1) of article 11 of this Act vests in the person who commissions the work or in the author's employer, unless the parties expressly include it.

(6) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, unless the testator has provided otherwise, be deemed to include any copyright or prospective copyright in the work which is vested in the deceased.

**13.** (1) Copyright shall be infringed by any person who does or causes any other person to do, without a licence from the owner thereof, an act the doing of which is controlled by copyright.

Infringements.  
Amended by:  
*L.N. 148 of 1975;*  
*XIII. 1983.4;*  
*XXIV.1995.362.*

(2) Copyright shall also be infringed by any person who,

without the licence of the owner of the copyright, imports into Malta, otherwise than for his private and domestic use, or distributes therein by way of trade, hire or otherwise, or by way of trade exhibits in public, any article in respect of which copyright is infringed under the last preceding sub-article.

(3) Where any person infringes the copyright in a work he shall be liable, at the suit of the owner of such copyright, to be condemned by the Civil Court, First Hall, to the payment of damages or to the payment of a fine of not less than ten liri nor exceeding five hundred liri as the said court, having regard to the circumstances of the case, may deem proper, and to the restitution of all the profit derived from the infringement of the copyright:

Provided that where the defendant proves to the satisfaction of the court that at the time of the infringement he was not aware and could not reasonably be expected to be aware that copyright subsisted in the work to which the action relates, the court shall not condemn him to the restitution of the profit.

(4) The court may, moreover, in a suit instituted under the last preceding sub-article, on the application of the plaintiff, order that all the infringing articles still in possession of the defendant be delivered to the plaintiff.

(5) In an action for infringement of copyright in respect of the construction of a building, no prohibitory injunction or other order shall be made -

- (a) after the construction of the building has been begun, so as to prevent it from being completed; or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

Prohibition to mutilate or modify a work.

*Amended by:*  
*L.N. 148 of 1975;*  
*XIII. 1983.4;*  
*XXIV.1995.362.*

**14.** (1) It shall not be lawful for any person, including the assignee of the copyright or a licensee thereunder, without the author's consent, to mutilate or modify any work during its term of copyright in a way prejudicial to the honour or reputation of the author.

(2) Saving the provisions of the last preceding article, any person who contravenes the provision of sub-article (1) of this article shall be liable at the suit of the author or his heirs to be condemned by the Civil Court, First Hall, to the payment of a fine, as and for damages, of not less than ten liri and not exceeding five hundred liri.

(3) In any proceedings under the last preceding sub-article the court shall order the destruction of all the infringing articles still in possession of the defendant where it is satisfied that the prejudice caused to the author is so serious as to justify such measure.

(4) The provision of the last preceding sub-article shall not apply where the infringing article is a building, but in that case the fine referred to in sub-article (2) of this article shall be of not less than fifty liri and not exceeding one thousand liri.

**15.** (1) In any case where it appears to the Board that a licensing body or a co-owner - Functions of the Copyright Board.

- (a) is unreasonably refusing to grant a licence in respect of copyright, or
- (b) is imposing unreasonable terms or conditions for the granting of such licence,

the Board may direct that, as respects the doing of any act relating to a work with which the licensing body or the co-owner, as the case may be, is concerned, a licence shall be deemed to have been granted by the licensing body or by the co-owner at the time the act is done, provided the appropriate fees fixed by such Board are paid or tendered before the expiration of such period or periods as the Board may determine.

(2) Saving the provisions of paragraph (m) of the proviso to sub-article (1) of article 7 of this Act, the provisions of the last preceding sub-article shall not apply where the refusal to grant a licence, or the terms and conditions for the granting of a licence, represent the unanimous decision of all the co-owners.

(3) In this article -

"co-owners" means two or more persons having distinct copyrights in a composite production, namely any production consisting of two or more works;

"licensing body" means an organization which has as its main object, or one of its main objects, the negotiation and granting of licences in respect of copyright works, and includes an individual carrying on the same activity.

**16.** The Minister shall make regulations prescribing anything which may be prescribed under this Act and may make regulations extending the application of this Act in respect of any or all of the works referred to in sub-article (1) of article 3 of this Act - Regulations and extensions of application of Act.

- (a) to individuals who are citizens of or are domiciled in,
- (b) to bodies of persons constituted and established in, or commercial partnerships registered under the laws of,
- (c) to works, other than sound recordings and broadcasts, first published in,
- (d) to sound recordings made in,

a country which is a party to a treaty to which Malta is also a party and which provides for the protection of copyright in works which are protected under this Act.

**17.** (1) The Minister shall by notice in the Government Gazette appoint a Copyright Board, consisting of a chairman and two other members for the purpose of performing the functions assigned to such Board by the provisions of this Act. Copyright Board.  
Amended by:  
LVIII. 1974.68;  
L.N. 148 of 1975;  
VIII. 1990.3.

(2) The Chairman of the said Board shall be a Magistrate or a person who has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years.

(3) The Minister shall also appoint two other persons to act as

members of the Board, one to replace the chairman and the other to replace any of the other two members, whenever the chairman or any of the other members, as the case may be, is, for any reason, unable to carry out his functions.

(4) Every member of the Board shall hold office during the Minister's pleasure and the Minister may, without assigning any reason, revoke the appointment of any member and appoint a new member whenever he deems it to be necessary.

(5) The members of the Board, with the exception of the chairman if he is a Magistrate, shall, before entering upon their office, take before the Attorney General the oath to examine and decide any matter referred to them with equity and impartiality.

Cap. 12. (6) The chairman or any other member of the Board may abstain or may be challenged by any of the contending parties for any of the causes mentioned in article 734 of the Code of Organization and Civil Procedure. Any question regarding any cause of abstention or challenge and any question which is a question of law alone shall be decided by the Chairman of the Board.

Cap. 12. (7) The Board shall have the power to summon any person to give evidence or to produce books or other documents before it, and the Chairman of the Board shall have, in regard to the summoning and examining of witnesses before the Board, the same powers as are by the Code of Organization and Civil Procedure conferred on the Civil Court, First Hall.

(8) Proceedings of the Board shall be held in public and the Board's decision shall be notified to the parties by registered post to their respective business or private addresses and, unless the contrary is proved, such decision shall be deemed to have been served on the party concerned not later than the third day succeeding the day when it was posted to such party.

(9) The Minister may make regulations governing proceedings before the Board and, without prejudice to the generality of the foregoing, may make regulations -

- (a) prescribing the manner in which any matter may be referred to the Board;
- (b) prescribing the procedure to be adopted by the Board in dealing with any matter referred to it under this Act and the records to be kept by the Board;
- (c) prescribing the manner in which the Board shall be convened and the place where the Board shall hold its sittings;
- (d) prescribing a scale of costs and fees; and
- (e) generally for the better carrying out of the functions assigned to the Board by this Act.

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- 18.** (1) There shall lie a right of appeal from all decisions of the Board. Appeal from decisions of Copyright Board. Amended by: L.N. 148 of 1975.
- (2) Any appeal shall be brought before the Court of Appeal by application within fifteen days of service of the Board's decision. L.N. 148 of 1975.
- (3) The Board established under article 29 of the Code of Organization and Civil Procedure may make rules concerning appeals to the Court of Appeal under this Act, and prescribing a scale of costs and fees in relation to such appeals. Cap. 12.
- 19.** Costs and fees in respect of proceedings before the Board and before the Court of Appeal shall be borne by the parties in such manner as the said Board or court, as the case may be, shall decide. Costs and fees. Amended by: L.N. 148 of 1975.
- 20.** This Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter. Application to works made before commencement of Act.
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