

# AUTHORS' RIGHTS

## copyright in a democratic society

Journalists need strong authors' rights  
both to sustain their  
economic independence  
and to defend quality  
and ethical journalism



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# Foreword

Copyright<sup>1</sup> faces heavy criticism from different civil movements around the globe. The main cause is the growing sense that copyright has become an aggressive weapon in the hands of industry, aiding the growth of titanic commercial media enterprises and fuelling global monopolisation of culture, knowledge and innovation.

There are some grounds for this concern. Parts of the media and information industry have been greedy and they misuse their dominant position to force authors and performers to accept unfair contracts in which they sign away all rights, often for paltry payments. This type of contract also prevents scientists and other academics from allowing their works to be published in university databases where they are a valuable knowledge sharing resource accessible to others.

The lack of moral rights and forced transfer of rights in countries that have adopted the Anglo-American copyright system means, to a large extent, that industry players are often the sole owners of rights. The benefits of copyright to authors and performers and society have become invisible.

This negative development has its roots in the United States, the UK and other countries with copyright systems that do not maintain a continuous link between authors and their work. Many people in developing countries feel that copyright has become an obligation to pay high prices to an already prosperous industry instead of providing a set of rights for building a national cultural market based on the works of national creators and which can sustain and nurture the culture of the nation.

Public acceptance of sole copyrights is fuelled by the wish to give authors and performers the bargaining power to earn a living which enables them to continue creative or intellectual work for the benefit of all. It is also driven by the wish to give creators the "moral rights" to protect the integrity of their works and to be credited. At the same time, the industry having rights is a positive force when it fosters a professional partnership with authors and satisfies the need to protect the economic investment in that partnership.

<sup>1</sup> In the languages of continental Europe the correct term would be authors' rights and related rights or just authors' rights. In the English language copyright is the common term for the rights of authors and the related rights of performers and producers.

But public faith in these principles is being badly shaken. If confidence is to be restored to the benefit of all, publishers, producers and broadcasters need to realise that they must treat creators fairly. They must demonstrate to the public that creators are getting a fair share of the profits that come from the reuse of their work. For their part governments and legislators must not give in to publisher demands for 'work-for-hire' like rules. The public needs to be assured that the industry cannot use a dominant market position combined with digital rights management systems to diminish the influence of the creators and to undermine collective management societies.

The information food chain starts and ends with creators. That is why the hostility to copyright in some countries is intolerable. Without these rights creators in developing countries will not be able to make a living. When that happens there is no creative process that allows creativity, culture and originality to flourish.

Getting the balance of different interests right is vital if copyright is to continue having a beneficial effect on society. Building public trust is the key part of re-establishing the necessary worldwide acceptance from all stakeholders.

Journalists are one of the key groups involved in this debate. It is essential for all journalists, just like artists, authors and others, to enjoy the highest level of copyright protection of their works.

Journalism and mass media are essential parts of the democratic fabric of modern society; however, if we are serious about maintaining professionalism and setting standards for high quality and ethical reporting, it is vital that journalists are able to make a living and be properly rewarded for the work they do. They also need to have a say in how their work is used, and when it is used – that's what professionalism and journalism is all about.

**This document explains why.**

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# Democracy depends absolutely on informed citizens

The building block of any democratic society is the individual. The more citizens are well informed, the more independent and the more actively they participate in society, the stronger and the better the democracy.

In order to play their part in a democracy, citizens must have unhindered access to free, diverse and independent news media. This access is a fundamental right recognised by Article 19 of the Universal Declaration of Human Rights.

## The media depend absolutely on journalists

The building block of a free press and news media in general are individual journalists, photographers, or broadcasters. Their skills and judgement are an important guarantee of independent reporting.



Journalists<sup>2</sup> have particular duties to society; and they are held individually liable if they fail in these special obligations. Journalists must, therefore, have rights that balance these duties.

Authors' rights – among other rights – are essential to the profession of journalism, both to the economics of being a journalist and to the defence of professional ethics.

Some countries in Europe and many in the rest of the world provide inadequate protection of authors' rights. This poses a major problem for journalists everywhere, particularly given the globalisation of media ownership and distribution. It is also an obstacle to the development of a free press in tune with a modern democracy.

## Journalists' duties, liabilities and rights

Journalists have a personal obligation to respect the code of good press conduct. In many countries journalists are also personally liable for their reports or photographs. To balance these duties and liabilities the journalists have rights of press freedom, the right to protect sources and – in some countries – authors' rights.

### Duties and liabilities

A personal obligation to deliver the work agreed upon in an employment or freelance contract

A personal obligation to respect the code of good press conduct

And, for some, personal liability for the content of their work

### Balancing rights

Labour rights and rights of collective bargaining

Rights to fair contracts

Press freedom rights

Authors' rights and moral rights to defend the integrity of their work and to be identified

<sup>2</sup> Whenever the term "journalist" is used it also covers photographers, cartoonists and others who make content for the electronic and print media.

# Media owners want the US system of "work-for-hire"

Media corporations in continental Europe are demanding the adoption of forced transfer of copyright from employed journalists (and other authors and performers) at both national and European level. The inspiration for this is the "work-for-hire" rule in the US copyright system and the similar rule in the copyright system of the UK.

It is therefore essential for the European public and the European politicians to be aware:

- That such legal interference in favour of the publishers and producers is not necessary either to society or for commercial reasons.
- That "work-for-hire" or similar rules would not solve problems, as the current European system of authors' rights works perfectly well.
- That introducing such legislation would instead damage society and harm the interests both of users and of authors

Adopting a work-for-hire system is a step back from a reasonably fair balance in a democratic system building on collective bargaining and a step towards corporate sole control of the rights to intellectual and artistic works.



# Two systems in collision

Two distinct legal systems govern the rights of authors in different countries. Though the differences are narrowing as international law is extended, understanding the differences between them is essential to the public debate on authors' rights and how they are applied.

## The Copyright system

The Anglo-American copyright system sees copyright primarily in commercial terms. It focuses on how copyright in journalism and other works can be traded as a commodity on the market.

Employees have no authors' rights – neither economic nor moral – under the copyright system. The rights are either automatically transferred by law or belong by law to the employer.

In countries following US law, freelancers who “work for hire” are in the same position. The moral rights to be identified as the author and to defend the integrity of a piece of work do not exist in the US for any form of journalism. In the UK and Ireland, they do not exist in a wide range of journalism including news reporting. Even where moral rights do exist, in countries with copyright laws they can be waived, and publishers and broadcasters systematically pressure authors to sign over their rights.





## **Moral rights are waived in copyright countries**

In all countries with copyright laws, freelancers can be and are pressured not only into “assigning” their economic rights but also into “waiving” their moral rights: the right to be identified and to defend the integrity of a piece of work.

In each of these cases, the work ends up owned and controlled entirely by the publisher or broadcaster and moral rights disappear.

## **Lack of dialogue causes ethical problems**

There is little difference between the two systems when it comes to transfer of the rights of use necessary for conducting the normal business activities of the media. However, the lack of moral rights and dialogue between the media and journalists in copyright countries – particularly, over uses outside those normal business activities and over the sale of rights to third parties – raises major ethical problems. It is also unfair economically: the copyright system completely disrupts the normal bargaining balance between authors as suppliers and the media as users.

## **The Authors’ Rights system**

The authors’ rights system applies in almost all Continental European and in a number of countries outside of Europe. The authors’ rights system focuses on the rights of the individual author.

The authors’ rights consist of moral rights and a number of exclusive rights that give the author or performer sole power to authorise use of the works and to enter into agreements on payment, royalty and precautionary conditions for various uses of the work.

## Unwaivable moral rights

The moral rights to be identified in connection with all publication, and to be able to defend the integrity of the work, are absolute. Authors cannot waive these rights in contracts (except for special uses of minor importance<sup>3</sup>).

The European system presupposes that the extent of rights transfer or licensed uses is a matter for negotiation between the author and the publisher or broadcaster – alongside other terms of a collective agreement or individual contracts of employment or engagement. If an employment contract or a collective agreement is silent on the question of rights transfer, the publishing company is deemed to have all the rights necessary to conduct its normal business activities. If the company wants a more extensive rights transfer, this can freely be brought up in negotiations over a collective agreement, a contract of employment or a contract for a piece of work.

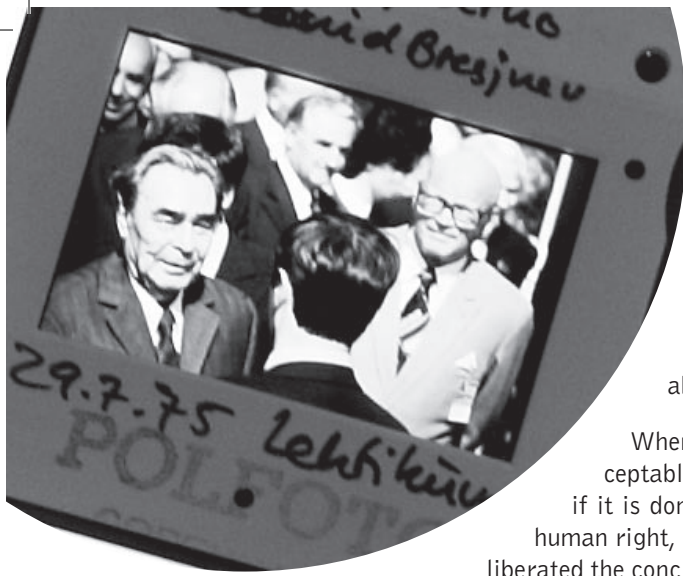
The authors' rights system therefore gives journalists the possibility of dialogue and of defending both their economic and their ethical interests in the use of their work.

## Authors' rights and the right of free labour negotiations are human rights

Adequate authors' rights protection is a human right and so is the basic labour right of free negotiations. The closing document from the Tripartite Meeting on the Future of Work and Quality in the Information Society: Media, cultural and graphical sector held by the International Labour Organisation (ILO) in October 2004 states that employers and creative workers share a strong interest in the role of copyright and neighbouring rights.

The closing statement points out that these rights should be strongly protected and among other things be treated in accordance with core labour standards as reflected in the ILO Declaration on Fundamental Principles and Rights at Work. One of the most significant of these core rights is the effective right of collective bargaining.

3 E.g. necessary (and ordinary) alterations in connection with the adaption of widescreen movies to television format.



The forced legal transfer of authors' rights on entering into employment or into a work-for-hire contract is interference in, and a restriction of, both of the above mentioned human rights.

When can such interference be acceptable in a democratic society? Only if it is done in consideration of another human right, and then only after having deliberated the concrete circumstances and having weighed up carefully the competing rights and conflicting interests. The publishers and producers are able to handle free negotiations and must be able and willing to respect the moral rights (of identification and integrity). Any move in EU legislation to close the gap between the two systems should therefore be taken in the direction of the authors' rights system.

## **The gap between the systems has narrowed**

The two systems are not as far apart as they were: some copyright laws have, for example, incorporated moral rights for some kinds of work. And in the authors' rights system it is generally accepted that moral rights can be waived for special uses of minor importance. The publishers and producers have also been granted a range of "neighbouring rights"<sup>4</sup> - the most familiar of which is the right of the producer of a recording of a musical performance - and these exist independently of the rights of the authors and performers.

## **The remaining differences are of great importance**

Under the Anglo-American copyright system employed journalists do not have authors' rights. Freelance journalists have some protection (of economic and, in some cases, moral rights), but the protection they do have (including the moral rights) can be signed away - and often is, in grossly unequal negotiations with the media companies.

<sup>4</sup> Producers of audiovisual recordings, producers of information databases and broadcast producers have also been granted related rights in many countries.

Under both the copyright and authors' rights systems freelancers suffer from lack of protection against unfair contracts and lack of collective bargaining rights. But the absence of unwaivable moral rights in the copyright system and the fact that employed journalists are stripped of their rights amplifies these deficiencies in the copyright countries.

Under the work-for-hire rule employed journalists are left with no influence whatsoever over the re-use of the editorial material for which they are personally responsible and with no possibility of negotiating a fair share of the income which the reuse of their work generates. (See the chart on p. 14-15 which illustrates the most important differences for journalists). There are no well-founded arguments for tipping the balance of interests so entirely in favour of the publishers and producers. On the contrary, experience from countries where there are free collective negotiations over authors' rights shows that not only does this not hinder new technological uses or economic competitiveness – these negotiations have a number of positive effects for the development of the media and for society as a whole.

## **The authors' rights system is in tune and dynamic**

In countries where employed journalists enjoy free bargaining over authors' rights, ordinary labour negotiations produce the necessary collective agreements with terms that are reasonable for both parties.

Media companies do not need extra legal protection. They are far the stronger party in negotiations. They are fully able to acquire the rights of use they need. Journalists need employment and freelancers want to be hired. The media are no less developed and no less competitive in countries with the Continental European authors' rights system. On the contrary, the authors' rights system has a built-in inducement to constructive dialogue between publishers, broadcasters and their content creators – something that is in tune with a modern democracy.

Collective agreements are excellent instruments for licensing. Digital rights management systems, in combination with collective agreements, make it easy for the companies to manage the rights on behalf of employed and freelance authors.

# IMPORTANT DIFFERENCES I

## AUTHORS' RIGHTS SYSTEM

### Normal business activities of the publisher

The publisher or producer will always acquire the rights necessary to conduct the normal business activities if these are covered by the work contract.

The moral rights (the right to be named as the author and the right to protect the integrity of the work) remain with the journalist and cannot be waived.

### Rights of use for public access, web archive, syndication to sister companies

Public access to the web archive or syndication to daughter companies will normally be outside the normal business activities covered by the work contract. Licensing is handled in supplementary collective agreements or in codicils to the work contracts. The journalists use the opportunity for dialogue to ensure good press conduct and to negotiate equitable remuneration fees where this is relevant.

The moral rights remain with the journalist.

### Rights of use for collective purposes, electronic "press clippings", re-transmission

These rights will typically remain with the journalist as these activities are outside the scope of normal business activities. The journalists authorise the licensing of these rights through collective rights management societies. Some collective management societies are author controlled, some are controlled jointly by authors, performers, publishers, producers and broadcasters.

The moral rights remain with the journalist.

### Sale, transfer or licensing of rights

The rights to sell, transfer or license rights of use to third parties remain with the journalist unless otherwise stated in a written agreement. Journalists have entered into many collective agreements that authorise the media companies to sell rights of use to third parties. The agreements focus on ethically correct treatment of the journalistic material (independent consumer journalism must for example not be sold for reuse in marketing etc.). The journalists negotiate a fair share in the extra profits.

# § FOR (STAFF) JOURNALISTS

## COPYRIGHT SYSTEM

### the media company in question

All rights of use in the works of employees or other "work-for-hire" belong to the publisher or producer unless otherwise stated in a written contract.

The journalists do not have moral rights and will therefore not be able to claim the right to be named or to protect the integrity or the journalistic work.

### public access to web archive, or companies and the like

In consequence of the above all of these rights also belong to the publisher or producer, unless otherwise stated in a written contract.

The journalists do not have moral rights and will therefore not be able to claim the right to be named or to protect the integrity or the journalistic work.

### live licensing for information/educational retransmission of cable – and satellite etc.

In consequence of the above all of these rights also belong to the publisher or producer, unless otherwise stated in a written contract.

The journalists do not have moral rights and will not be able to claim the right to be named or to protect the integrity or the journalistic work.

In consequence of this the big collective rights management societies in copyright countries are publisher/producer controlled. Some freelance author groups have managed to organise author controlled societies but they are few and small.

### for rights to other third parties

In consequence of the above all of these rights also belong to the publisher or producer, unless otherwise stated in a written contract.

The journalists do not have moral rights and will not be able to claim the right to be named or to protect the integrity or the journalistic work.

# The work-for-hire system has harmful effects

Not only is it unnecessary to introduce work-for-hire or similar rules in Europe: to do so would be harmful.

## Harmful effects on journalists and journalism

- The work-for-hire and similar rules remove the incentive for media companies to co-operate with journalists on re-use and syndication of their journalistic works.
- This lack of partnership and dialogue over the use and re-use of independent journalistic material outside of the scope of the media in question weakens journalists' individual responsibility for media standards and ethics.
- The work-for-hire and similar rules reward companies for not negotiating, since the copyright system in general presumes that all rights in employees' work is transferred where no agreement exists and gives clients the upper hand in demanding transfer of all rights from freelances as well. This means that journalists do not receive their fair share of income from secondary uses.
- The work-for-hire and similar rules also mean that journalists lack the right to pursue third parties for misuse of their work. This is harmful both to their economic interests and to the ethical interests of journalists and journalism.



## Harmful effects on users and society

- The forced transfer of rights and the fact that moral rights can be waived promotes the establishment of sole control of rights – and therefore of the news and culture – by big media companies.
- Sole control enables the media corporations to hold back rights and to block collective licensing schemes. Media companies may withhold works to create a greater demand at a later time, or to artificially make room for marketing of some other goods or services.
- The copyright system effectively divorces journalists from their own work. This means that it does not give users the guarantee of the authenticity of the work that the authors' rights system provides. It increases cynicism about journalism as a merely corporate product. It increases the risk of improper use.

## The right balance of interests is essential

If copyright protection is to fulfil its societal purpose, the rights of authors and performers on the one side, publishers and producers on another side and the interests of users and society in general on a third, have to be carefully balanced.



# Balancing the

## **Users and society:**

Easy access for all to a variety of quality content on reasonable terms. Copyright legislation which promotes authenticity and high standards and counteracts sole control by facilitating and supporting collective licensing schemes.

## **Authors**

Strong copyright protection of both economic and moral rights to secure economic independence and to defend the authenticity and integrity of their works. No forced legal transfer or legal presumptions in favour of publishers, producers and broadcasters. Copyright legislation which promotes collective rights management.

## **USE**

consumers,  
citizens,  
libraries, schools  
and public  
companies

## **AUTHORS,**

journalists, writers,  
film and TV directors,  
photographers, performers,  
satirical cartoonists,  
graphic designers,  
composers, etc.

# the interests

## **USERS**

consumers  
schools, society  
schools, private  
public  
companies

## **PUBLISHERS**

TV & film producers,  
distributors, newspapers,  
radio and television  
broadcasters,  
telecommunication  
companies, etc.

### **The common interests of the players:**

Copyright and authors' rights legislation that secures the basis for the creation of quality content. Conditions which further professional and economically sustainable production of diverse high-quality content that meets ethical standards.

### **Publishers, producers and broadcasters:**

Easiest possible conditions for acquiring copyright from authors and performers at the lowest possible cost. Weak protection of authors and performers. Strong protection against piracy. No legal restrictions on sole control.

# The balance needs repair

## Easy lawful access for everyone

The rights protecting the works of authors and performers are the basis for ensuring a large and diverse supply of works of culture, art, science and information. The general public – and authors themselves – need unhindered access to knowledge, culture and information on reasonable terms. Journalists and authors are often interested in and willing to offer free or very low cost access to works for research or scientific purposes, exchange of information etc., but are often forced into exclusive and unlimited transfers or licenses of their rights to the publishers.

Collective bargaining and collective management of copyrights are means of ensuring the right balance between media owners and journalists. Securing these rights contributes to the independence and diversity of media coverage – and thus to the functioning of a democratic society.



## **Freelances and other individual contractors need special protection**

The balance is unfair for freelances and other individual authors and performers negotiating by themselves. They need stronger protection against undue pressure from media companies that exploit their dominant positions.

They need to be guaranteed equitable remuneration for licenses to use the copyright protected material they produce. They should be guaranteed a reasonable share in “best seller” income when this is out of proportion with the originally agreed remuneration.

They should be protected against contracts that sign away future and yet unknown or unspecified rights of use and be given full rights of collective representation regardless of competition rules.

Germany has recently strengthened its authors’ rights legislation along these lines and thus has set an example to be followed.

## **No forced transfer of staff (employed) journalists’ copyright**

There is nothing that indicates a need to strengthen the negotiating positions of publishers, producers and broadcasters. On the contrary there are many signs of an increasing need to ensure that journalists (and other authors) can exert an influence over the use and reuse of their works. One way of ensuring this is to remove forced transfer of rights where it exists, introduce moral rights for all and to support licensing schemes that build on collective agreements and collective rights management.

## **Publishers and producers need protection against piracy**

There must be a continuous focus on whether the present legislation is adequate to combat piracy. It is the opinion of the EFJ that the possible need for further steps must be carefully balanced against freedom of expression and information.

# Europe should be aware that it has the better system

It is important for all the stakeholders in the balance of interests that copyright fills its functions both at the national, European and international level. Harmonisation of copyright legislation in Europe or under the umbrella of the World Intellectual Property Organization can be an important tool to further the effectiveness of cross-border cultural and commercial activities.

The EU should continue to develop its copyright legislation on the basis of the authors' rights system and to promote the benefits this system has for modern democracies.

This should be done under the umbrella of the World Intellectual Property Organization. Far from being outdated the authors' rights system is the better system for a society and an industry that builds and develops on the basis of the competence and responsibility of each individual.



# IFJ guiding principles for journalists authors' rights

- All journalistic works – whether text, photo, audiovisual or other – must be protected by authors' rights
- All creators of journalistic works must be recognised as authors whether they are employed, work for hire or on contract, or are freelances
- All journalists must have full economic rights – based on an exclusive right to authorise the making available, publication or broadcast of their work
- All journalists must have moral rights – the right to be named as the author and the right of integrity – and these rights must be unwaiveable
- All forced legal transfer of authors' rights of use (work-for-hire clauses and similar rules) must be abolished for staff and freelance authors alike
- All authors must be given protection against undue pressure to enter into unfair contracts following individual negotiations, and be guaranteed equitable remuneration
- All staff and freelances must also have the right of collective bargaining regarding authors rights of use (collective negotiations need not be subject to special protection)
- Legislation that supports rights clearance through collective rights management societies and collective licensing should be upheld where it exists and introduced where it does not and is appropriate



Find more information on IFJ/EFJ  
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# AUTHORS' RIGHTS

## copyright in a democratic society

Journalists need strong authors' rights  
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