

GETTING THE DEAL THROUGH

Copyright

in 33 jurisdictions worldwide

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Legislation and enforcement

1 What is the relevant legislation?

Copyright in Latvia is regulated by the Copyright Law, adopted on 6 April 2000, and effective as of 11 May 2000. In addition, a few Regulations of the Cabinet of Ministers relate to the copyright legislation, for example, on levies of blank recording media and counterfeit products. The Civil Procedure Law regulates the processes related to copyright litigation.

2 Who enforces it?

The protection of economic rights of holders of copyright (and of neighbouring rights) can be enforced individually; however, if such rights cannot be ensured on an individual basis, or if such protection is difficult, it is conducted by an organisation that administers economic rights on a collective basis.

Authors form an organisation that administers the economic rights of authors on a collective basis, and the purpose of its activities is the administration of the rights of authors on a collective basis. An organisation that administers neighbouring rights on a collective basis is established where there are common interests between the holders of the rights, for example, performers, film and audio producers, and the purpose of the organisation's activities is the administration of neighbouring rights on a collective basis.

To enforce their rights, the holders of copyright and of neighbouring rights may resort to the court corresponding to the place of residence or registration of a respondent. If a person has used a work illegally (no matter if there was or was not his or her prior intent to commit illegal actions), the holder of the copyright or neighbouring rights is entitled to claim economic loss and compensation for moral damages.

Agency

3 Is there a centralised copyright agency? If so, what does this agency do?

There is no centralised copyright agency, however, there are numerous collective rights agencies such as the Copyright and Communication Consultations Agency/Copyright Agency of Latvia (AKKA/LAA), the Society of Authors of Latvia (LAA), and the Society of Computer Program Copyrights.

Subject matter and scope of copyright

4 What types of works are copyrightable?

The objects of copyright, regardless of the manner or form of expression, are the following:

- literary works (books, brochures, speeches, computer programs, lectures, addresses, reports, sermons and other works of a similar nature);
- dramatic and dramatic-musical works, scripts and treatments of audio-visual works;
- choreographed works and pantomimes;
- musical works with or without words;
- audio-visual works;
- drawings, paintings, sculptures and graphic art and other works of art;
- applied works of art, decorative and scenographic works;
- design works;
- photographic works and works expressed by a process analogous to photography;
- sketches, drafts and plans for buildings, structures and architectural works, models of buildings and structures, other architectural designs, city construction works and garden and park plans and models, as well as fully or partly constructed buildings and implemented city construction or landscape objects;
- geographical maps, plans, sketches, and moulded works that relate to geography, topography and other sciences; and
- other works of authors.

The following derivative works are also protected: translations and adaptations, revised works, annotations, theses, summaries, reviews, musical arrangements, screen and stage adaptations and similar works; and collections of works (encyclopedias, anthologies, atlases and similar collections of works), as well as databases and other compiled works which, in terms of the selection of materials or arrangement, are the result of creative activity; and databases, in accordance with specific protection as set out in the Copyright Law.

5 What types of rights are covered by copyright?

The author of a work has inalienable moral rights. In addition, the author can have economic rights. Economic rights of an author include the exclusive rights to:

- communicate the work to the public;
- publish;
- distribute;
- broadcast;
- retransmit directly or indirectly;
- reproduce the work temporarily or permanently;
- publicly perform the work;
- make the work available to the public by wire or by other means, so that it is accessible on demand;
- lease, rent or publicly lend originals or copies of the work

(except for three-dimensional architectural works and works of applied art);

- translate the work; and
- arrange and adapt for stage or screen, or otherwise transform the work.

With respect to the use of computer programs and the use of a databases, the exclusive rights have a separate regulation, also set in the Copyright Law.

6 What may not be protected by copyright?

Copyright protection does not extend to ideas, methods, processes or mathematical concepts. Copyright protection also does not extend to:

- regulatory enactments, administrative rulings and other documents issued by the state and municipal governments, and adjudications of courts, and any official translations and consolidated versions of such texts;
- as well as any official symbols, signs and maps; and
- information provided in the media concerning news of the day and various facts and events.

7 Do the doctrines of 'fair use' or 'fair dealing' exist? If so, please describe. If not, please describe any comparable limitations.

The Copyright Law does not set forth doctrines of 'fair use' or 'fair dealing', but it includes comparable limitations whereby copyright shall not be considered infringed, if without the consent of the author and without remuneration:

- a work is used for informational, educational and research purposes;
- a work is reproduced in order that the visually impaired or the hearing-impaired may use it, or to meet the needs of libraries, archives and museums, or for the purposes of judicial proceedings;
- a use is made of a work that is publicly accessible or on display;
- a musical work is used during official or religious ceremonies, as well as in teaching institutions as part of a face-to-face teaching process;
- a work is temporarily used by broadcasting organisations or is parodied or caricatured;
- computer programs are used for reproduction, translation and other transformations or to ensure the interoperability of a computer program; and
- the author's work is alienated to another person repeatedly.

8 What are the standards used in determining whether a particular use is fair?

The standards of fair use are set in the Copyright Law and include detailed descriptions on previously mentioned cases of copyright usage without the consent of the author and without remuneration. For example, a work is considered to be used for informational purposes if:

- the title of the work and the name of the author are indicated, and a work communicated to the public and published in the form of quotations and fragments is reproduced for scientific, research, polemical or critical purposes, or is reproduced in news broadcasts and reports of current events to the extent justified by the purpose of its use;
- publicly made political speeches, notifications, announcements and other analogous works are published in news-

papers, broadcasted or otherwise made known to the extent justified by the informational purpose; or

- current events are illustrated, communicated to the public and published through photographic works.

9 Are architectural works protected by copyright? How?

Architectural works are protected by copyright; this protection is set forth in the Copyright Law. All sketches, drafts and plans of structures of buildings, constructions and architectural works are copyright-protected. Also other architectural designs, city construction works and garden and park plans and models are copyright-protected. The Copyright Law also provides protection for fully or partly constructed buildings and completed city construction or landscape projects.

10 Are performance rights covered by copyright? If so, how?

Performance rights are covered by neighbouring rights; this protection is included in the Copyright Law. With respect to their performance, performers have exclusive rights to:

- broadcast or communicate to the public the performance or the fixation of a performance that has not been previously fixed, and distribution thereof;
- broadcast or retransmit the fixation of a performance, making it available to the public, by wire or otherwise, on demand;
- lease, rent or publicly lend the fixation of a performance; and
- reproduce the fixation of a performance directly or indirectly, temporarily or permanently.

11 Are 'neighbouring rights' recognised? If so, how?

Yes, neighbouring rights are recognised and covered by the Copyright Law. The objects of neighbouring rights are performances and their fixations, audio recordings, films and broadcasts. Holders of neighbouring rights can enforce their rights, observing the rights of authors of a work.

12 Are moral rights (*droit moral*) recognised? If so, please describe?

The author of a work has the inalienable moral rights of an author to authorship; also to:

- decide whether and when the work will be disclosed;
- revoke a work;
- have his or her name indicated; and
- expect the inviolability of a work and be able to instigate legal action against any distortion, modification, or other transformation of his or her work, as well as against such an infringement of an author's rights as may damage his or her honour or reputation.

Copyright formalities

13 Is there a requirement of copyright notice? If so, please describe.

No, a copyright notice is not compulsory; however, authors (or their successors) may indicate their rights to a work by means of a copyright protection symbol, which is affixed in such a manner and in such a place so that it is clearly visible. Such a sign include three elements: the '©' sign, name of the holder of the copyright and year of first publication of the work.

14 What are the consequences for failure to display a copyright notice?

There are no consequences for failure to use a copyright notice.

15 Is there a requirement of copyright deposit? If so, please describe.

There is no requirement of copyright deposit.

16 What are the consequences for failure to make a copyright deposit?

Not applicable.

17 Is there a system for copyright registration? If so, please describe.

Copyright ownership does not require registration, special documentation for the work, or observance of any other formalities.

18 Is copyright registration mandatory? If so, please describe.

There is no requirement of copyright registration.

19 How do you apply for a copyright registration?

Copyright registration is not possible in Latvia.

20 What are the fees to apply for a copyright registration?

Not applicable.

21 What are the consequences for failure to register a copyrighted work?

Not applicable.

Ownership and transfer

22 Who is the owner of a copyrighted work?

The owner of the copyrighted work initially is the author, who may transfer the ownership of economic rights to other parties, but moral rights are not transferable.

23 May an employer own a copyrighted work made by an employee, and in what circumstances?

The economic rights of an author may be transferred to an employer in accordance with a contract. If there is no agreement, and an author has created a work in the course of performing his or her duties within the employment relationship, the moral and economic rights to the work remain with the author, except in relation to computer programs. If a computer program has been created by an employee while performing a work assignment, all economic rights to the computer program belong to the employer unless otherwise specified in an agreement.

24 May a hiring party own a copyrighted work made by an independent contractor, and, if so, in what circumstances?

If a hiring party has entered into a written agreement with an author for a commissioned work, the author must perform the work in accordance with the provisions of such agreement and must provide the work within the specified term and in the manner indicated in such agreement; other terms are also agreed upon in the agreement, including the ownership of the copyrighted work.

25 May a copyrighted work be co-owned? If so, in what circumstances?

The copyrighted work may be co-owned if the copyrighted work has two or more authors who created the copyrighted work, and

permission to use the copyrighted work must be granted by all copyright owners.

26 May rights be transferred? In what circumstances?

Copyright ownership may be transferred, with certain limitations. Moral rights of an author cannot be transferred, but the heirs of an author have the right to protect their moral rights. The right to communicate and use a work, and to receive remuneration for permission to do this, are passed to the heirs of the author. These economic rights of the author can be transferred with an agreement in whole or in part.

27 May rights be licensed?

Copyrighted works may be licensed. Moral rights attached to the copyrighted work cannot be licensed.

28 Are there compulsory licences? What are they?

The users of a copyrighted work are required to obtain permission of the copyright-holder for each type of use of the work, and for each time it is used. It is prohibited to use works without permission of the copyright-holder, except for the cases specified by law. The copyright-holder's permission can be issued both as a licensing agreement and as a licence, so before using a work, the user must enter into a licensing agreement or obtain a licence.

In a licensing agreement, one party gives permission to the other party to use a work and specifies the type of use of the work by agreeing provisions for the use, the amount and terms of remuneration and procedures.

A licence constitutes permission to use a particular work in such a way and in accordance with such provisions as are indicated in the licence. A licence may be:

- non-exclusive, giving the recipient of the licence the right to undertake activities indicated concurrently with the author or other persons who have received or will receive a relevant licence;
- exclusive, giving the sole right to conduct the activities specified in the licence to the recipient of the licence; or
- compulsory, being issued by an organisation that administers the economic rights of authors on a collective basis, and such a licence gives the right to use the works of all the authors represented by such an organisation.

29 Are licences administered by performing rights societies? If so, how?

There are several copyright agencies, as listed in question 3.

Organisations that administer the economic and neighbouring rights on a collective basis also protect the economic rights of rights-holders in accordance with the written contracts entered into. Such organisations:

- agree the amount of remuneration and procedures for payment with rights users, and other provisions with which licences are issued;
- issue licences to users for exercising the rights, which are administered by the particular organisation, and collect the remuneration as specified;
- specify fair remuneration in cases when the organisation has a legal obligation to administer the economic rights of the holders of copyright and neighbouring rights, and collect the specified remuneration;
- collect remuneration for the public resale of original works of visual art, for the reproduction of works for personal use,

and for other types of use of works in accordance with regulatory enactments; and

- apportion the collected remuneration and pay it to the rights-holders.

30 Is there any provision for the termination of transfers of rights?

The term for which a licensing agreement is entered into or for which a licence is issued is determined by agreement of the parties. If a licensing agreement which has been entered into or a licence which has been issued is not restricted as to time, the rights-holder may terminate the licensing agreement or revoke the licence, giving notice six months in advance; a provision in a licensing agreement or a licence pursuant to which the author waives such rights is void.

- 31** Can documents evidencing transfers and other transactions be recorded with a government agency? If so, with which agency and how?

Transfer of copyright cannot be recorded with any government agency.

Duration of copyright

- 32** When does copyright protection begin?

Copyright protection begins from the creation of the copyrighted work. Dissemination or fixation of the copyrighted work is not required.

- 33** How long does copyright protection last?

Copyright to audio-visual works is effective for 70 years after the death of the last of the director, script author, dialogue author and author of a musical work created for an audio-visual work.

Copyright to an anonymous or pseudonymous work is effective for 70 years from the moment when it has legally become available to the public.

Copyright to a work created by co-authors is effective for the duration of the lives of all the co-authors and for 70 years after the death of the last surviving co-author.

Copyright to works whose term of copyright begins at the moment of legal publication, and which are published in volumes, parts, instalments or sections, is effective separately for each volume, part, instalment or section.

A provision peculiar to Latvia is that authors whose works were prohibited in Latvia, or the use of which was restricted from June 1940 to May 1990, will have the years of prohibition or restriction excluded from the term of the copyright.

A work, whose term of protection is not calculated from the moment of the death of the author or authors, protection ceases if within a period of 70 years after the creation of such a work it has lawfully not become accessible to the public.

Any person who, after expiration of a copyright, lawfully publishes or communicates to the public a previously unpublished work acquires rights that are equivalent to the economic rights of an author and are effective for 25 years from the first publication or communication to the public of the work.

- 34** Does copyright duration depend on when a particular work was created or published?

Copyright protection begins from the creation of the copyrighted work. In case of copyright to an anonymous or pseudonymous

work, the 70-year period commences from the moment when the work has legally become available to the public.

- 35** Do terms of copyright have to be renewed? How?

Terms of copyright may not be renewed. Works in respect of which copyright has expired may be freely used by any person, observing the moral rights of the author.

Copyright infringement and remedies

- 36** What constitutes copyright infringement?

Infringements of copyright include fixation, publication, communication to the public, reproduction or distribution in any form of copyright objects without the consent from the holder of the copyright; and non-payment of remuneration for any copyrighted activities and non-informing on the use of copyrighted works is considered an infringement.

Infringements of copyright are also unauthorised activities by which electronic information regarding the administration of rights attached by holders of copyright has been extinguished, amended or transformed and activities, by which such information is distributed, broadcast, communicated to the public or published. Destruction or circumvention of effective technological measures that were intended by the copyright-holder to restrict or not allow any activity with the copyrighted object, which have occurred without the copyright-holder's permission, are considered as infringements of copyright.

Manufacturing, importation, distribution, sale, lease, advertisement or use for other commercial purposes of devices or their components and provision of services whose aim is circumvention of effective preventive technological measures, or their destruction, are copyright-infringing.

The same principles apply also to infringements of neighbouring rights.

- 37** What remedies are available against a copyright infringer?

If illegal use of the objects of the copyright or neighbouring rights has been caused by a fault of a person, the rights-holder is entitled to claim economic loss and compensation for moral damages. In order to enforce their rights, rights-holder may resort to the relevant court depending on the place of residence or registration of the respondent.

Upon identifying counterfeit copies, the police or another competent state institution confiscates them. The competent institution takes a decision regarding destruction of counterfeit copies and decides on liability of the offender if the offender is identified.

- 38** Is there a time limit for seeking remedies?

The possibility of seeking remedies arises the moment the infringing activities occur. The general term to seek remedies in copyright cases terminates if a party entitled to claim remedies does not use them within a 10-year period of the moment of the infringing activity.

- 39** Are monetary damages available for copyright infringement?

Copyright owners are entitled to claim economic loss and compensation for moral damages for copyright infringement. The amount of economic loss and compensation for moral damages should be determined according to principles as set out in civil

Update and trends

Even though the Copyright Law is eight years old, it is still developing in Latvia. A number of authors are still not willing to be part of organisations that administer economic rights of authors on a collective basis as such membership requires certain expenditure and in their opinion the benefit of being a part of such organisation

is minor. However, during the past years the amount of informative items on copyright protection in media has increased and authors and copyright owners start to more pay attention to the effective copyright protection.

law. In order to determine the amount of economic loss, the copyright owner can calculate the profit that has been gained illegally from the unauthorised use of the copyrighted object. If such calculations are not possible to obtain, the copyright owner may claim economic loss taking into account his or her own lost profit.

40 Are attorneys' fees and costs available for copyright infringement? In what circumstances?

In general, costs related to conducting a case include attorneys' fees, costs related to attending court sittings and gathering evidence. Costs related to conducting a case are reimbursed in the following amounts:

- attorneys' fees which are disbursed in the actual amount, but subject to limits set forth by law;
- travel and accommodation costs related to attendance at court sittings in the amount as specified by the Cabinet of Ministers; and
- costs related to obtaining written evidence, which are disbursed in the actual amount.

Costs related to conducting a case are recovered from the defendant in favour of the plaintiff, if the plaintiff's claim has been allowed in full or in part, or if a claim is settled before reaching the courts. If a claim is dismissed, recovery of costs related to conducting a case is recovered from the plaintiff in favour of the defendant.

41 Are there criminal copyright provisions? What are they?

Criminal law provides for two types of relevant criminal offences: infringements of copyright and unlawful activities with objects of the copyright. Infringements of copyright include:

- intentional infringement of copyright;
- appropriation of authorship or copyright, or compulsion of joint authorship; and

- compulsion, by means of violence, threats of violence or blackmail, of the renunciation of authorship, or compulsion of joint authorship by the same means.

The sentences regarding infringements of criminal copyright cases can range from custodial arrest, community service or a fine, to imprisonment of up to seven years. If infringements of copyright occur repeatedly or by a group, such activities are subject to more severe punishment.

Unlawful activities with objects of copyright include acquisition for sale, storage or concealment of objects of copyright if they are published, reproduced or otherwise used by infringing copyright, as well as acquisition of other material benefits in relation to copyrighted objects. Here again, punishment can become severe if the said activities are conducted repeatedly or in a group. The sentence can vary from custodial arrest or community service or a fine, up to imprisonment for up to seven years.

42 Is online copyright infringement actionable?

Online copyright infringement is not specifically dealt with in the Copyright Law; thus, general copyright infringement principles apply, namely, unauthorised distribution of a copyrighted work without the consent of the copyright owner constitutes copyright infringement.

43 How may copyright infringement be prevented?

In order to minimise copyright infringement, copyright owners shall safeguard their rights as much as possible. Where possible, effective technological measures shall be used; but the most effective ways to combat copyright infringements have not been explored and effected in Latvia so far.

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Relationship to foreign rights

44 Which international copyright conventions does your country belong to?

Latvia is a party to:

- the Berne Convention for the Protection of Literary and Artistic Works (as amended in Paris 1971);
- the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva 1971);
- the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome 1961);
- the WIPO Performances and Phonograms Treaty (Geneva 1996); and
- the WIPO Copyright Treaty (Geneva 1996).

45 What obligations are imposed by your country's membership of international copyright conventions?

The WIPO Performances and Phonograms Treaty obliges Latvia to accord to nationals of the other contracting states the same treatment it accords to its own nationals. The same principle is provided for the rights granted in the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of Their Phonograms and International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.