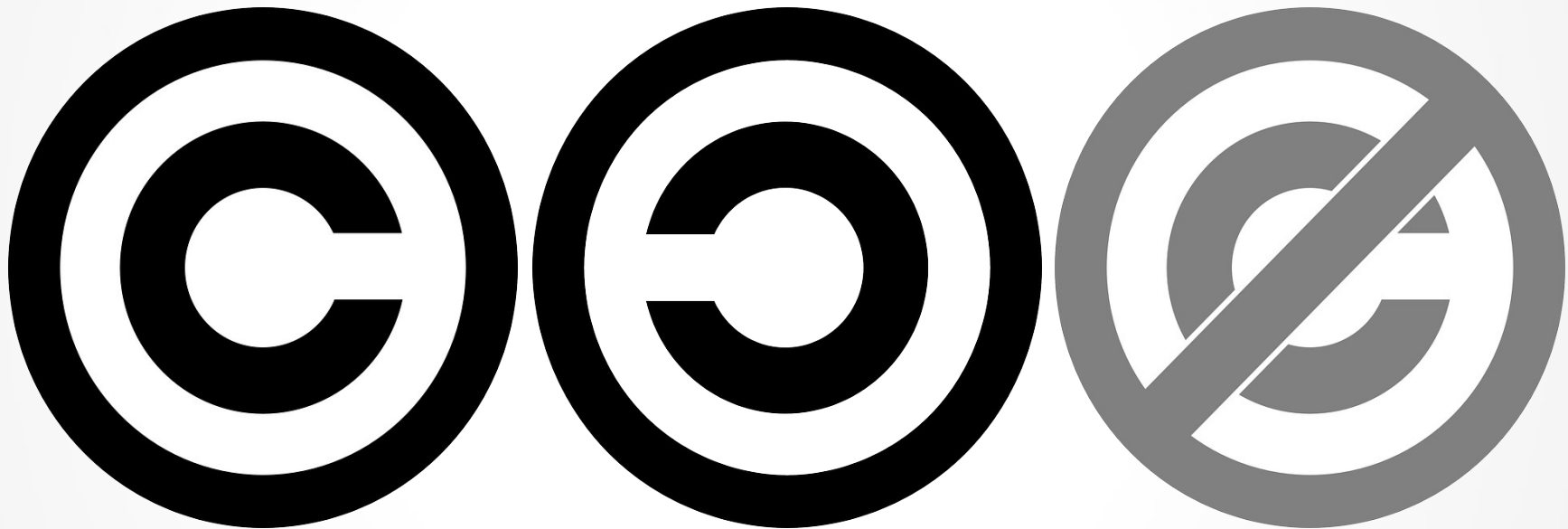


Intellectual Property Protection

part IIa: Copyright law – cont.
BA and MA programmes in English



*Source: <http://pixabay.com/pl/prawa-autorskie-symbolu-30343/>, <http://pixabay.com/pl/copyleft-licencji-licencjonowania-38671/>, <http://pixabay.com/pl/cc0-licencji-ikona-symbolu-98571/>, Licencja: **CC0 Public Domain***

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WNE UW, 2025/26

What is legal under the Copyright law?

- Borrowing a movie from cousins to watch it at home.
- Copying a film/song from a friend in a student group for our own use.
- Listen to and watch clips on YouTube.
- Playing hits from "Top 13 - Radio WAWA" at a private party with friends.
- Download some songs from the WWW/Internet (e.g. Youtube) and store them on a hard drive.
- Make a photocopy of a friend's Varian book.
- Borrowing a computer game from a friend and playing it at home.

Not all of the above situations are legal!

The limits of the Author's Economic Rights

- Economic rights are subject to the limits (in the Act):
 - time
 - **FAIR USE (FU) - the terms of use of the work without permission of the right holder** *≈ “statutory” licence*
 - *All conditions (regarding the fields of exploitation) must be met*
 - *Specific terms for each case*
- **FU** allows the use of work (in a way normally reserved to the economic rights holder, the author) without permission, but **respecting the Moral Rights**
- **FU**: private/personal (private/personal purposes) and public (professional purposes)
 - Private: results for a specific audience (recipients)
 - Public: results for an unspecified audience (recipients)
- **Art 23-35e, 75 par. 2 (computer programs)** *describe the conditions of use of the work without the permission of the rightholder*

Personal fair use (art. 23 CL)

- par. 1: It shall be permitted to use **free of charge** the work having been already **disseminated** for purposes of **personal use** without the permission of the author.
This provision shall not authorize to build constructions according to other authors' architectural works as well as architectural and urban planning works and to use electronic data bases possessing the features of a piece of work unless this applies to one's own scientific use not connected with any profit-gaining purposes.
- par. 2: The scope of personal use shall include use of single copies of works **by a group of persons having personal relationships, including in particular any consanguinity [blood relation], affinity [kinship] or social relationship.**
 - **Does not apply to** the use of computer programs, databases
 - You are allowed to make photocopies e.g. books and textbooks for your personal use or for your friends.
 - *Basically for free, but there is an “extra tax” included in the price of the equipment and supplies (art. 20-20¹ CL).*
 - You can copy music (also from CD) or a movie – among your friends.
 - You can use the works available on a computer network (Internet): print them, send them by e-mail, download music files from each other.
 - You are allowed to use websites ☺

*Copyright Law allows us to use the works free of charge for our personal/private purposes.
This is the form of respecting of social ties, as well as common sense.*

Personal fair use and p2p, file hosting

- The most popular **unauthorised sources** on the web are:
 - P2P networks;
 - file hosting services (e.g. Chomikuj.pl, RapidShare */closed 2015/ and its current alternatives*);

*In P2P networks, when we download, we also disseminate , what is **illegal**.*

*Downloading for personal use is permitted,
so using hosting services is **legal**.*

NOTE!!!

If we are sure that the person providing us with the files does not have the right to do so, **by downloading them, we run the risk of committing a criminal act – FENCING /receiving and handling stolen goods/ (Art. 291 or 292 Criminal Code).**

What is legal under the Copyright law – cont.?

- The publication, which appeared in a newspaper, reviewed video frames.
- Presenting images, videos during a lecture.
- Using previous publications / scientific achievements of other researchers in one's own research.
- Providing books and videos by a school or library for educational purposes.
- Copying by the university for students (to take home) commercial software used during classes / in teaching.
- Recitation of a modern poem at a gala at the beginning of the academic year at the Warsaw University / at school etc.
- *Playing music in one's own barbershop / hairdressing salon ...*

Not all of the above situations are legal!

Public fair use

If there were **no (economic) limit to copyright**,
there would be cases of so **great restriction**
(e.g. in the circulation and access to information)
that it would cause an enormous economic slowdown,
violation of the right to information
and limit the reception of information by the public.

PUBLIC FAIR USE prevents this.

**Public FU allows the use of works
without permission only for a specific purpose
but not necessarily free of charge.**

***Any use contrary to the authorised purpose may result in
civil and criminal consequences.***

Selected forms of public fair use

- “The Press privilege” – faster circulation of information (art. 25, 26 CL) – changes in 2015
- “The scientific privilege” (research and teaching) (art. 27, 27¹ CL)
 - **Educational institutions, universities and research institutions ...** shall be allowed, for the purpose of illustrating the content used for teaching or in order to conduct their own research, to use disseminated works in original and in translation, and to make copies of fragments (not exceeding 25 % of the volume of the work) of the disseminated work or **minor works in full** in the same purpose. (art. 27 par. 1 CL – changes in 2015, **2024**, own translation)
 - provided that the use is not for profit
 - take place under the responsibility of those institutions or entities, on their site or elsewhere
 - or via a secure electronic environment, accessible through authentication procedures only to learners and those teaching or conducting research at the institution or organisation concerned.
 - “the use” – very broad meaning
 - Only a fragment can be copied by the teacher, by the researcher.
 - but ... what is a fragment? – **clarified in 2024! (25%)**
 - E-learning classes – are also covered by this regulation (*with restrictions*)

Selected forms of public fair use

- “The scientific privilege” (research and teaching) (art. 27, 27¹ CL)
 - For teaching and research reasons it shall be permissible to include disseminated minor works or fragments from larger works in textbooks, reading books and anthologies. (art. 27¹ par. 1 CL – changes in 2015, own translation)
 - *In the cases specified in paragraph 1, the author shall have the right to receive remuneration. (art. 27¹ par. 2 CL – changes in 2015, own translation)*
- **Text and data mining (art. 26²,26³) – NEW 2024**
 - Cultural heritage institutions, as well as universities and other selected educational institutions “shall have right to reproduce works for the purpose of text and data mining for the purposes of scientific research...”
 - out for direct and indirect financial gains
 - “It shall be permitted to reproduce distributed works for the purpose of text and data mining, unless otherwise stated by the rightholder”
 - “works ... may only be stored for the purpose of text and data mining, for as long as is necessary to achieve this purpose”.

Selected forms of public fair use

- “The library privilege” (art. 28 CL) – apply to educational institutions, universities, scientific and research institutions, archives, libraries, museums – there were some problems in the interpretation, clarification in the amendment after 2015
- **“The Quotation privilege” (art. 29-29² CL – changes in 2015):**
 - It shall be permitted **to quote**, in works constituting an independent whole, **excerpts** of disseminated works or disseminated artworks works, photographic works or **minor works in full**, to the extent justified by the purpose of the quotation, such **as explaining, polemic, critical or scientific analysis, teaching or the rights governing a given kind of creative activity**. (art. 29 CL – changes in 2015, own translation)
 - Anyone is allowed
 - Any excerpts or minor work (including a computer program) if it has been disseminated
 - In any way and on any „field of exploitation” but **for a specific purpose**
 - You may not modify to the quotation (integrity protection)
 - **Clear indication of the quotation (by italics or quotation marks)**
 - **Clear indication of authorship and the source – not only in the bibliography, but also in the footnote or [in brackets]!!!!!!!**
 - In the case of websites - it is necessary to indicate the date of the last access
 - **A translation from a foreign language is also a quotation (e.g. in student works)**

Selected forms of public fair use

- “The Quotation privilege” cont.
 - Any research work shall not consist of quotations only and contain only small additions of your own text.
 - **If the citation is not necessary (needed), it may be a violation of the Quotation privilege.**
 - **Quotation can only play a supporting role.**
 - It shall be permitted to use the work for the purpose of parody, pastiche or caricature, to the extent justified by the rights governing a given kind of creative activity. (art. 29¹ CL – changes in 2015, own translation).
 - It shall be allowed to incorporate unintentionally the work into another work, as long as the incorporated work is no significant for the work, into which it was incorporated (art. 29² CL – changes in 2015, own translation) – **not fully clear**
- **Orphan works (art. 355-359 CL) – NEW in amendments from 2015, consistent with the EU law:**
 - *refers to works for which the author's economic rights are still in force, but the owner can't be found.*
 - *the orphaned work database in EUIPO.*
- **Regulation for works not available for distribution (art. 3510-3525 CL) - NEW in amendments from 2024.**

Selected forms of public fair use

- *Other forms of Public FU: art. 30-33⁵ CL*
- **new** (art. 33¹): public fair use for peoples with disabilities (some changes in 2019)
- **But there are also some general limitations of FU**
 - It shall be permitted to use the works, within the scope of fair use, **on the condition that the author and the source have been named (identified)**. The identification of the author of the work and the source should take into account the existing possibilities of retrieving such information. **The authors shall not have the right to remuneration, unless this Act states otherwise.** (art. 34 CL)
 - The permissible use must not infringe **the normal use of the work** or **violate the rightful interests of the author.** (art. 35 CL)
 - It is not clear how to explain this.

PLAGIARISM

- Plagiarism – no explicit/formal definition in the Copyright Act (or anywhere else)
- **In the strict sense it is a violation of the right to be the author of the work (usurpation of the authorship) – “wrongful appropriation” of another author's work (misleading others as to the authorship)**
- **Currently, it is also considered an infringement of the Author's Economic Rights??? and ideas, concepts... that are not protected by copyright**
 - The latter may be allowed by copyright - because not protected or can be treated as inspiration, but the question of ethical aspects
- **Conditions of plagiarism:**
 - **Copying (appropriation) of fragments of other works**
 - **Presenting them as one's own original work**
- It is a violation of Author's Moral Rights which are unlimited in time!!!
- **Legal Liability**
 - even unintentionally – so „incidental” acts are also punishable
 - **civil (art. 78 CL)**
 - **and criminal (art. 115 CL /other 116-119) – max. imprisonment up to 3 years (or fine, restriction of liberty)**
 - **prosecuted “ex officio” (criminal liability)**
 - **disciplinary and administrative* (reopening of administrative procedures ...)**
 - **Protection of appearance, addressee of correspondence and secrecy of information sources (art. 81-84 CL)**

PLAGIARISM

- The issue of plagiarism in the other Acts: on higher education (Journal of Laws 2018 item 1668 as amended)
 - **Detection of plagiarism may result in the resumption of the procedure leading to the academic degree (dr, dr hab.) or degree (master, bachelor) and than invalidation of such degree (The Code of civil procedure art 145 u. 1)**
 - Procedure for investigating suspected plagiarism by students
 - **Disciplinary penalties: warning, reprimand, reprimand with a warning, suspension of certain student rights for a period of up to one year, expulsion from the higher education institution**
 - **The Rector / Dean is obliged to report the case to the public prosecutor's office**
 - **No statute of limitations for suspected plagiarism (in the context of losing a degree - based on the Higher Education Act)**
- **Self-plagiarism** – reusing of one's own work (or part of it) that has already been disseminated/published without citing the original work
 - is not an infringement of copyright, but such action is **unethical**
 - may infringe the rights of the publisher

PLAGIARISM

- There is a University system for detecting plagiarism. It is based on several steps:
 - Lecturer / supervisor - works (not only dissertations) written under supervision are carefully checked.
 - Then the works are sent to the JSA and/or ANTYPLAGIAT system. Using mathematical algorithms and a database of economic texts, it analyses the texts for plagiarism at three different levels *(not without imperfections)*.
 - *A few years ago the new anti-plagiarism system has been introduced – JSA (and OSA)*
 - Reviewers (of theses) - duplicate the operations carried out in the first step.



**IF PLAGIARISM IS FOUND
DISCIPLINARY PROCEDURE IS INITIATED!**
(and should be a notification to the public prosecutor!)

Cheating (during exams)

- Problematic under copyright law, but ...
- Unethical and morally objectionable
- Inconsistent with the internal regulations of the university
 - Art. 307 par. 1 Act on higher education: For **violation of the regulations of the university** and **for acts violating the dignity of the student**, he/she is liable to disciplinary action ... (own translation / just idea)
- Possible interpretation in the light of the Penal Code (PC)
 - Art. 272 PC: Whoever **procures an attestation of an untruth by deceitfully misleading** a public official or **another person authorised to issue such a document** shall be subject to the **imprisonment for up to 3 years.**
 - Art. 13 § 1 PC: **Whoever with the intent to commit a prohibited act, directly attempts** its commission through his conduct which, subsequently however does not take place, **shall be held liable for an attempt.**

Special rules of protection – computer program

- Special rules apply to :
 - *Audiovisual works – there is no time to talk about it*
 - *Databases – as above*
 - **Computer programs according to EU Directives**
- Computer programs
 - Copyright vs. patents – **in Poland only copyright protection.**
 - **Copyright protection of computer programs:**
 - Limited Author's Moral Rights
 - Stronger Author's Economic Rights
 - Personal fair use not applicable and public fair use only partially applicable

Special rules of protection – computer program

A legal user of a copy of the program (art. 75 CL):

- May reproduce permanently or temporarily only if it is necessary to use the program as intended
- May make a back-up copy if that is necessary for using such computer program, such copy may not be used concurrently with the computer program
- May analyse the program in order to understand the ideas and principles only in the normal use of the program (without decompilation)
- May decompile only in order to ensure interoperability with other programs if this can not be achieved otherwise, and only in part to achieve this interoperability without the right to further use of the source code.

**And what if we want more ...
or we need similar solutions
as expensive commercial software?**

**There is a legal alternative
offered by the community (on the Internet).**

Free (~open) software - examples

- OS (operating system) – **Linux (different distributions)**
- The office suite – **OpenOffice, LibreOffice**
- E-mail Client – **Mozilla Thunderbird** (and many others)
- Image manipulation software – **Gimp, Rawtherapee, Inkscape** (and many others)
- Statistical and mathematical software – **Maxima, R-CRAN** (and many others)

Computer programs – Free Software Movement



http://pl.wikipedia.org/wiki/Richard_Stallman

- Richard Stallman, Free Software Foundation



- Only collective improvement of computer programs makes sense → copyright protection disturbs this goal (improvement)
- Commercial programs - created in laboratories, free programs - in the "bazaar" environment - on the market
- Sharing of programs should be unrestricted and free of charge → as a way to achieve the above goal.
- technical support, creating copies, etc. can be paid for - commercial opportunities

- FSF has created a free software licence model (some problems with European regulations due to non contractual language)

- Idea: the freedom **to run/use** it for any purposes, **to study and modify** to the source code as you wish, **to redistribute** copies and **to distribute copies of your modified versions** – **4 freedoms**
- As a result, the FSF does not abolish copyright protection, but it does affect the way computer programs are used and distributed.
- **GNU-GPL** (Virus copyleft) vs GNU-LGPL
- There are also other free software licence models besides GNU-GPL(e.g. BSD)



Devolution (transfer) of Author's Economic Rights

- **Only Economic Rights are subject to devolution/transfer (as mentioned above)**
 - AER transfer: only by inheritance or by contract (art. 41 CL)
 - **The contract must specify the specific fields of exploitation**
 - The contract **shall not** apply to all future works (in general).
 - For a fee or for free of charge (similar to sale or donation)
- **LICENCE CONTRACTS ARE ALSO POSSIBLE**

- The new type of licence, which facilitates massive "sharing" of works, – does not apply to computer programs
- **CC – allow free use of the work (to use, to copy, to modify/improve, to redistribute) with respect for the Moral Rights of the author.**
- CC licences are non negotiable – prepared by Creative Commons organisation and adapted by CC Polska (<http://creativecommons.pl>)
 - are in the form of an offer (avoiding the requirement of the contract form)
 - Non-exclusive
 - Free of charge
 - Unlimited and cannot be terminated! **(problematic under the Polish legal system)**
 - Automatic termination only in case of actions inconsistent with the terms of the licence
 - With the limitation of liability for damages

Creative Commons allows to use works:

- **respecting the Author's Moral Rights;**
- **free of charge but with respect for the author's effort and labour;**
- **in accordance with applicable law.**

- Four basic types of CC licences:
 - **Attribution (BY)**: the work may be used freely provided that the name of the author should be identified
 - **Non commercial use (NC)**: the work may only be used for purposes unrelated to obtaining financial benefits (non-commercial purposes)
 - **No Derivatives (ND)**: the work may be used, but derivative works not permitted (adaptations)
 - **Share Alike (SA)**: derivative works must be subject to the same licence as the original work
- It is possible to combine different types of CC licences , e.g. **CC-BY-NC**
- **Only two are completely free: CC-BY, CC-BY-SA**
- Current version 4.0 (**better adapted to international law**, previous versions are still in use)
- Three different layers: the Legal Code, the Commons Deed - the “human readable” version, the so-called computer layer (understandable for the other software)
- **The web search engines: results can be limited to those covered by CC**
- **It is necessary to specify the correct licence type and the correct source!!!!!! - <http://creativecommons.org>**
- **Public Domain (≈CC0) vs. CC – they are not the same**



Copyright on the Internet

- Internet: there should be no problems with the application of copyright to works available on the Internet → because the Internet is mentioned in the Copyright Act as one of the possible fields of exploitation, but...
 - is global – immediate access in many locations
 - extraterritorial – no territorial limits
 - Single digital version of "everything"
 - no distinctions between different types of work vs new category of work
 - The possibility to create / produce an infinite number of copies
 - Anonymity and difficulty in identifying personal data (at least expensive)
 - Different manifestations of communication on the Internet: websites, information portals, social networks, blogs, sharing of cultural goods
 - The problem of the linking structure – copyrighted or not?
 - Deep-linking – can it infringe copyright or not? (or unfair competition practices)?
 - Internet and distribution of a work – lack of depletion (exhaustion) because there is no transfer of ownership of a copy of the work.
 - digital copy and online distribution – different from traditional forms
 - Dissemination vs. ~~publication on the internet~~
 - Caching – temporary and incidental reproduction of works (art. 23¹ CL) – quite new
- **BUT copyright law indicates "Internet" as one of the fields of exploitation**

Copyright on the Internet

- Information on the Internet = freedom to use? → such is perception – can you always use freely?
- Hints (again) – it is more safe to use the work on the Internet on the basis of:
 - CC licence
 - Personal and Public Fair Use
 - The first one is often considered in different ways
 - P2P networks: download yes, dissemination no!!!, but there are some interpretations, that it always violates the general clause (art 35 CL) or it is not within the group of persons in social relations (in case of resending)
- The problem of enforcement of rights on the Internet in each case of violation:
 - how to “catch” the offender?
 - compensation for the infringement disproportionate to the cost of catching the offender and the court proceedings (in many cases).

Liability for infringement of copyright - examples

- In the US, **50000 cases were brought** against users of BitTorrent. Lawsuits cover **the illegal distribution of five films**: "Steam Experiment," "Far Cry", "Uncross the Stars," "Gray Man" and "Call of the Wild 3D". The German company IT Guradley (which activity is to precisely monitor file-sharing networks, which is BitTorrent) was engaged in collection of data necessary for the preparation of claims.
- The court in Chorzow brought 2251 charges against the 34-year-old man: **2209 charges of violating copyright law by trading in illegally copied discs and 42 charges of stealing computer programs. "The pirate" faced up to five years in prison.**

But ... (examples of copyright trolling)

- The German law office Urmann + Collegen representing porn producers, sent letters in 2013 to many RedTube'a users (including those in Poland) asking them to pay fines for violations - *was there any reason to pay?*
- The owner of the rights to Cz. Miłosz photos demanded a fee from schools

Consequences of infringement of copyright protection

(art. 78-80, 115-123 CL)

- **Without the protection the Copyright is useless**
- The fight against copyright infringement has become stronger and more effective:
 - The compensation in civil court cases are growing ;
 - The civil and criminal regulations are becoming more strict;
 - There is a growing number of entities protecting the interests of authors;
 - There is a growing probability of detection - new possibilities of monitoring.
- **Civil** sanctions
- **Criminal** sanctions (independent of civil liability) = penalties **for crime**
- **Disciplinary and administrative** sanctions
 - In the case of students (doctoral candidates), the sanctions are similar - suspension of the student's rights for up to 1 year or expulsion from the university. (art. 308)
 - The Code of Administrative Procedure (art. 145 par. 1) allows for the resumption of the administrative procedure for the award of a Master's degree (Bachelor's degree, etc.) or a doctoral degree, a habilitation degree and, if needed, the previous decision may be repealed (i.e. the withdrawal of the title / degree right).

Liability for infringement of copyright - examples

Cases of deprivation of scientific/ academic title or degree
and disciplinary cases at universities ...

Homework 😊

Try to find some examples in Poland and in the other countries...

Thank you for your attention

*(I'd like to thank for the inspiration and for some of the materials used on these slides
dr hab. Joanna Tyrowicz and her collaborators from the iPiracy project)*