

Italy

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Rapisardi Intellectual Property

Legislation and enforcement

1 What is the relevant legislation?

The main Italian copyright regulations are set out in Law No. 633 of 22 April 1941 and articles 2575–2583 of the Civil Code. Other regulations are those set out in the international copyright conventions to which Italy is party (see question 45).

2 Who enforces it?

In actions taken to protect rights of use, the holder of the right allegedly violated – ie the author or assignees – is the legally entitled person. In the case of works created in collaboration with other contributors, such as works comprising music and literary texts, the entitlement belongs to the author of the musical part. If a work is created by the indistinguishable and inseparable contributions of more than one person, copyright belongs jointly to all co-authors.

If the author has transferred the rights of use which are the subject of the infringement, he or she nevertheless remains entitled to intervene to protect his or her interests in proceedings instituted by the assignee. The holder of the rights of use is also entitled to act.

A special type of entitlement is also attributed to the SIAE (Italian Society of Authors and Editors).

Authors are entitled to protect their moral rights, which are inalienable. In the case of collaborative works involving a number of contributors, each author may take action to protect his or her contribution. If the collaborators' contributions are inseparable and indistinguishable, the defence may be exercised individually by each co-author.

When the infringement of copyright constitutes a criminal act, it may be prosecuted by the public law enforcement authorities.

Agency

3 Is there a centralised copyright agency? What does this agency do?

The SIAE is a centralised copyright collecting society which protects the patrimonial rights of the associated authors.

It grants licences for the use of protected works, collects royalties and distributes them to rightholders. It also deals with some of the public registries, such as the Cinematographic Public Registry and the Public Registry for software. Lastly, it deals with the deposit of unpublished works both for members and non-members, in order to establish paternity of the work.

SIAE membership is not mandatory; however, the collection of copyright fees is by law dealt with exclusively by the SIAE. Moreover, the intermediary and networking services offered by this specialised organisation are both useful and necessary. An SIAE member cannot manage his relationships with licensees but must refer all requests of licence granting to the SIAE.

In Italy, this intermediary activity is by law dealt with exclusively by the SIAE. However, an author can choose to become a member of

a foreign society of authors.

Not all patrimonial rights are covered by the SIAE's mandate; therefore, the author can choose to exclude the collection of certain rights.

Where neighbouring rights are concerned, other agencies can be appointed, such as Consorzio Fonografici (SCF).

Subject matter and scope of copyright

4 What types of works are copyrightable?

All intellectual works with a creative character, including literature, music, figurative arts, architecture, theatre, cinema, software and databases, are copyrightable under Italian law.

Copyright law protects all original works whether or not they possess artistic value, with the exception of industrial designs, for which artistic value is requested.

Originality implies that the work must be:

- expressed in a tangible form (ideas are not copyright-protected);
- the product of intellectual activity; and
- a personal expression of the creator.

A work is copyright-protected from the moment that these conditions are met.

5 What types of rights are covered by copyright?

There are two distinguishable categories of rights.

- Moral rights:
 - paternity of the work (ie the right to claim one's own status as author);
 - integrity of the work (ie the option of opposing any change that might damage the author's reputation); and
 - publishing rights (the option of deciding whether to publish the work or not).
- Patrimonial rights:
 - the right of reproduction;
 - the right of transcription of an oral work;
 - the right of execution, representation, acting, or public reading of the work;
 - the right of communication;
 - the right of distribution; and
 - the right of adaptation (to change, modify or adapt the original work, etc).

Each and every right is individually assigned by the author, who remains the owner of every right not specifically transferred.

6 What may not be protected by copyright?

Texts of laws are not protected by copyright (article 5 LDA; copyright legislation).

The law has not considered, for example, the following intellectual property to be protected by copyright:

- collections of regulations;
- companies' internal manuals;
- formats of radio and television programmes based on games and competitions;
- sport events;
- maxims of judgements;
- schemes of editorial projects.

7 Do the doctrines of 'fair use' or 'fair dealing' exist?

The notion of 'fair use' does not exist as such, but the Italian Copyright Law includes article 70 LDA, which substantially reproduces fair use or fair dealing.

Under the law, the summary, quotation or reproduction of songs or pieces of work and their communication to the public is unrestricted if made for critique, discussion, teaching purposes or scientific research.

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

The following conditions are used:

- reproduction of copyrighted works must be partial, not entire;
- marketed works must be independent from reproduced works;
- marketed works must not compete with reproduced works;
- the purposes of critique and discussion must be obvious;
- sources must always be identified (title, author, publisher and translator, if it is a translated work).

9 Are architectural works protected by copyright? How?

Architectural works are protected by copyright in Italy.

The architect cannot prevent others from doing the modifications that may be necessary while carrying out the architectural work, nor the modifications that may be necessary for an already completed work. However, if the work has a recognised important artistic value, the architect has the right to study and realise the modifications that may be necessary.

The Author can ask for damages if his reputation is affected by modifications of his architectural work carried out by others.

10 Are performance rights covered by copyright? How?

Performance rights are protected by Italian copyright law (article 15 LDA). The author has the exclusive right to perform, represent or play in public.

11 Are other 'neighbouring rights' recognised? How?

The most important neighbouring rights apply to producers of phonograms, cinematographic or audio-visual works; broadcasting organisations; performing artists; photographs; critical editions of works of public domain; and unpublished works published after copyright has expired. These rights are of paramount importance in licence agreements involving the use of the internet and digital technology, and are granted for 50 years.

12 Are moral rights recognised?

Yes. See question 5.

Copyright formalities

13 Is there a requirement of copyright notice?

There is no copyright notice requirement under Italian law. However, it is advisable to file a work in order to ensure certainty of the date of creation.

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

As there is no copyright notice requirement, failure to display is not sanctioned.

15 Is there a requirement of copyright deposit?

There is no deposit requirement in order to obtain copyright under Italian law; a work is protected as of the moment of its creation. However, depositing a work with the SIAE is recommended in order to prove the paternity of the work and its date of creation.

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

As there is no deposit requirement, failure to make a copyright deposit is not sanctioned.

17 Is there a system for copyright registration?

There is no registration copyright system under Italian law.

18 Is copyright registration mandatory?

Copyright registration is not mandatory in order to obtain copyright protection.

19 How do you apply for a copyright registration?

Although registration is not mandatory, it might be useful in order to prove the anteriority of the creation of a work.

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

The fee to deposit unpublished works at the SIAE is:

- €65 for SIAE members;
- €130 for authors who are not SIAE members;
- €260 if the deposit is requested by a legal person (societies, associations, institutions and so on) which holds the right to the economic exploitation of the works, or by a natural person (other than the author) who has acquired the right to the economical exploitation of the work from the author.

Registration with a Public Notary is rather expensive.

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

There is no registration requirement under Italian law, and therefore there are no consequences for failure to register a copyrighted work.

Ownership and transfer

22 Who is the owner of a copyrighted work?

The original owner of the rights is the author; or, in the case of collaboration, the co-authors.

Economic rights can be bought, alienated, or transmitted to others in any way permitted by law.

23 May an employer own a copyrighted work made by an employee?

According to court statements, an employer can gain the usage and exploitation rights of a copyrighted work created by an employee, but the moral rights remain with the author. According to Italian law, when an employee creates a copyrightable software or database (article 12bis LDA) or an industrial design (article 12ter LDA) within the scope of his or her employment activities, the employer automatically owns the patrimonial rights by virtue of the employment relationship.

When the employer is a public administration, the latter is the owner of the copyright on the work done on its behalf, on its appointment and at its own expense.

24 May a hiring party own a copyrighted work made by an independent contractor?

Patrimonial rights automatically belong to the hiring party by virtue of the hiring relationship, within the specific limits of the contractual relationship. Rights not specifically included in the agreement's operational aspects are not transferred to the hiring party.

Moral rights cannot be transferred.

The agreement must be in writing (article 110 LDA).

25 May a copyrighted work be co-owned?

A work can be owned by more than one person or entity if it is the result of a collaboration.

26 May rights be transferred?

Patrimonial rights may be transferred in all ways allowed by law and must be in writing. Moral rights cannot be transferred.

27 May rights be licensed?

Rights may be licensed. Generally, the same rules as those governing the transfer of rights apply.

28 Are there compulsory licences? What are they?

In some cases, intellectual works can be freely used without the author's permission to favour the interests of public information, study, free circulation and discussion of ideas.

For example, the law allows the free use of:

- news articles (article 65 LDA);
- public speeches (article 66 LDA);
- works protected under parliamentary, judicial or administrative procedures (article 67 LDA);
- reproductions for personal use and photocopying of protected works of up to 15 per cent of the entire work (article 68 LDA);
- temporary reproduction of a technological process (article 68 bis LDA);
- loans conducted by libraries, state record libraries and public authorities (article 69 LDA);
- reproduction of excerpts in school anthologies (article 70 LDA);
- public performance of musical pieces by bands and fanfares of the national armed forces (article 71 LDA).

29 Are licences administered by performing rights societies? How?

If the author is a member of the SIAE, he or she empowers it to act as an intermediary for all uses of works entrusted to its protection. If addressed in person, he must refer all licence-granting requests to the Society. The author cannot grant licences directly, renounce his rights or agree royalty rebates.

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

There are no specific and compulsory provisions for the termination of transfers of rights. General principles of the Civil Code are applied.

31 Can documents evidencing transfers and other transactions be recorded with a government agency?

Documents evidencing transfers and other transactions can be recorded with the Ministry of Cultural Activities or with the SIAE, depending on the type of work.

Duration of copyright

32 When does copyright protection begin?

Copyright protection begins from the moment the work is created.

33 How long does copyright protection last?

Patrimonial rights last for 70 years after the author's death. If a work can be divided into several parts, the term will be calculated for each part.

Patrimonial rights on films last for 70 years after the death of the last survivor among the director and authors of the script.

Patrimonial rights on photographic works last for 70 years after the year following the death of the author.

For anonymous works, the term starts at the work's first publication.

However, if the author subsequently discloses his identity, the original rules will apply (the term will last for 70 years after the author's death).

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

The normal duration of copyright protection is 'for the life of the author and until the end of the seventieth year solar after death' (article 25 LDA).

There are some exceptions to this rule:

- in collective works, the duration of copyright protection is 70 years after the first publication (article 26 LDA).
- in periodical collective works (magazines or newspapers), the duration of copyright protection is calculated from the end of each year of the publication of the individual works (article 30 LDA).
- in anonymous or pseudonymous works, copyright protection lasts for 70 years after the first publication. If the author's identity is proved or revealed before that period expires, the term determined in article 25 is applied (article 27 LDA); ie, protection will last for the duration of the author's life and then until the end of the seventieth year solar after his or her death.
- In accordance with article 11, the duration of copyright protection accruing to Public Administration (see question 23) is twenty years from the first publication (article 29 LDA).
- When parts or volumes (books) of the same work are published separately, at different times, the duration of copyright protection, fixed on a yearly basis, shall run for each part or for each volume (book) from the year of publication (article 30 LDA.).

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

Copyright cannot be renewed.

Copyright infringement and remedies

36 What constitutes copyright infringement?

The partial or total reproduction of the creative elements of others'

work, with usurpation of paternity and counterfeiting – understood as the exploitation of economic rights arising from the protected work without permission – is a copyright infringement.

37 Does secondary liability exist for indirect copyright infringement? What actions incur such liability?

There are no specific rules regarding vicarious liability for copyright infringement. Italian courts have not fully recognised internet service providers' secondary liability for indirect infringement, generally because of the outstanding relevance ascribed to the right of privacy.

38 What remedies are available against a copyright infringer?

Copyright legislation includes a protection system and civil penalties intended to protect the rightholder from infringement of his rights. Action may include:

- verification of legal ownership of the right;
- restriction of unlawful activities related to the infringement of the right;
- removal and destruction of items resulting from the infringement;
- compensation for damages sustained by the holder of the right infringed.

Other protective actions aimed at providing evidence of infringement are description, assessment and seizure of that which is considered an infringement of the copyright.

Article 166 LDA lays down another compensatory measure, which, however, does not replace compensation for damages: following the request of the interested party or ex officio, the court may order that the ordering part of the judgment be published in one or more newspapers, possibly repeatedly, at the expense of the losing party.

Criminal proceedings are also possible.

39 Is there a time limit for seeking remedies?

There is no time limit for claiming paternity of a work and opposing any modification that could be considered detrimental to the work.

After the author's death, the above right can be claimed without any time limit by his or her spouse and/or children; or, in their absence, by the author's parents and other direct ascendants and descendants; or, alternatively, by the author's brothers and sisters and/or their descendants.

Contractual claims and claims based on torts are regulated by the general rules of the Civil Code.

40 Are monetary damages available for copyright infringement?

Monetary damages may be claimed, including lost profits on the part of the author and profits made by the infringer.

The court may order damages to be settled through a lump sum based on, at least, the royalties that the rightholder would have earned if the infringer had asked for permission to use the right (article 158 LDA).

Moral damages must also be compensated.

41 Can attorneys' fees and costs be claimed in an action for copyright infringement?

The plaintiff may seek compensation for legal expenses, according to the Code of Civil Procedure. The proceedings' expenses, together with the fees for the defence attorney, shall be settled by the court and borne by the losing party.

42 Are there criminal copyright provisions? What are they?

The following are prohibited activities:

- the reproduction, transcription, recitation in public, dissemination and sale of another's work;
- disclosure of content before it is made public;
- the representation, performance, projection, recitation in public and dissemination of another's work suitable for public entertainment or a musical composition;
- the carrying out of the actions indicated in the letters above according to one of the methods foreseen by the law;
- the reproduction of a number of pieces, or performance or representation a number of times greater than the number that is allowed to be reproduced or represented;
- the retransmission by wire or radio, or the recording on phonograph records or other similar devices, of radio transmissions or retransmissions and the sale of phonograph records which have been unlawfully recorded.

Relevant criminal conduct is punishable by imprisonment and fines.

The law of 18 August 2000 No. 248 significantly changed the criminal regulations related to copyright infringement by changing the penal sanctions and introducing administrative, financial and additional sanctions (eg revocation of production or trade authorisations).

43 Is online copyright infringement actionable?

Yes; the use of intellectual property through the Internet must occur with the consent of the rightholders.

The law of 18 August 2000 No. 248 adapted the definition of criminal offences to consider new technologies with the aim of fighting piracy and counterfeiting perpetrated via the internet.

44 How may copyright infringement be prevented?

Copyright infringement may be prevented with surveillance activities, a task assigned by Italian law to the Communications Authority and the SIAE within their respective powers:

- on activities related to reproduction and duplication by any procedure, on audio-visual, phonographic or any other type of media support, as well on systems for use in public, through radio waves or cable, including radio and television broadcasting by any means;
- on projection in cinemas of works and recordings protected by copyright and the rights connected to them;
- on distribution, sale, rental, issue and use of any type of media support referred to in the first bullet point in this list;
- on public or private reproduction centres which use for their own purposes or make available to third parties, even without charge, photocopying, Xerox copying or similar reproduction systems;
- on the manufacturing, importation and distribution of devices and media supports referred to in article 71-septies;
- on auction houses, galleries and generally any entity engaged in the professional commerce of artworks or manuscripts.

Relationship to foreign rights

- 45 Which international copyright conventions does your country belong to?
- The Berne Convention for the Protection of Literary and Artistic Works in its (revised) version of the Paris Act of 24 July 1971;
 - the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 1961;
 - the Universal Copyright Convention (1952) as revised in Paris on 24 July 1971;
 - the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms of 1971;
 - the 1994 TRIPs agreement (Trade-Related Aspects of Intellectual Property Rights);
 - the WIPO Treaties of 1996 (Copyright Treaty and Performances and Phonograms Treaty).

Italy is also bound by European directives regarding intellectual property, whether incorporated into Italian law or not.

Update and trends

A proposed law for the protection of cartoon authors was recently presented to the Chamber of Deputies. It expects copyright legislation to allow that 'in the case of cinematographic work of animated cartoons, the authors of the drawings are considered co-authors of the work'.

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

By virtue of international conventions, foreign citizens are allowed to enjoy the rights granted to Italian nationals on the condition of reciprocity; that is, the Italian government protects foreign authors only if the author's country of origin protects Italian authors in its territory the same way it protects its own citizens.

By virtue of its EU membership, Italy has to implement European directives into Italian law.

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