

Final Option #3 – Case Study: Germany

Copyright in German, *das Urheberrechte*, translates literally to “author’s rights, thus an author can only be a natural person, not a company. German copyright law protects creations of the mind by authors in literary and artistic fields on the basis of a fundamental right to property.

Three specific acts for copyright are followed (EUIPO):

1. Act on Copyright and Neighbouring Rights (Copyright Act) (9 Sept 1965), which governs the requirements for the protection of works, contributions by performing artists and other uses, such as neighbouring rights protection, and the scope and infringement of rights.
2. Act on Copyright Works of Fine Arts and Photography (9 Jan 1907)
3. Act on the Administration of Copyright and Related Rights by Collecting Societies (24 May 2016), which governs the legal framework for operation of collection societies.

Germany does not have a centralized copyright agency where works can be registered, but all works are protected once they have been created in a tangible form by the creator and have a degree of individuality (EUIPO). Works protected by the Copyright Act include literary works, musical works, artistic works, photographic works, cinematographic works, and illustrations of a scientific or technical nature (Bolte).

Bolte explains that the Copyright Act provides seven rights (called “exploitation rights”) to the author. The right of reproduction, of distribution, of exhibition, of public performance, to make a work available to the public, to broadcast, and to publish and exploit derivative works. The Act also provides moral rights, which includes the rights of publication, to be credited as the author, and to prohibit alterations or distortions of an author’s work that could be detrimental to the intellectual or personal interests with respect to the work.

Although German copyright law does not have a general fair use doctrine, it does contain a section with specific provisions limiting the scope of rights for the copyright owner. These provisions are collections for religious use, newspaper articles, broadcast commentaries, and reproduction for private and other personal uses. Germany also does not recognize a “work for hire” doctrine, but instead allows the author to always keep their rights even when creating for employment uses. However, a compulsory license for production of audio recordings requires authors to grant the right of use to those producers (Bolte).

Protected works can be used by others if the following occurs: author permission has been granted, use through a Creative Commons License or other open content license, if law provides a limitation of author’s or related rights, but protected music cannot be used unless the creator allows through a license, such as Creative Commons. German law also does not allow a copyright to be transferred except through inheritance (EUIPO). These

laws promote use of licenses, and Creative Commons is a clear way to use protected German works. Much like in the United States, German copyright law allows for engagement with Creative Commons Licenses on a large scale.

Although calculations are complicated for anonymous/pseudonymous works, the standard length of copyright protection is an author's life plus 70 years. A publication right (for publishers) is 25 years from the first publication/public performance.

The Technische Universität Berlin encourages the use of Creative Commons Licenses, of which all six can be used in Germany. Previous Creative Commons Licenses versions 1.0, 2.0, and 3.0 have deeds specific to Germany, while Creative Commons 4.0 International (<https://creativecommons.org/licenses/#international-40>) has an international deed. With standard copyright protections lasting for the life of an author + 70 years, Creative Commons Licenses can be a valuable way to cultivate creativity and culture under shorter durations.

References

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