

Creative Expression: Benefitting from Your Copyright and Copyright Works of Others



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Colombo, Sri Lanka
March 7-10, 2011

Outline: What will we know after this session?

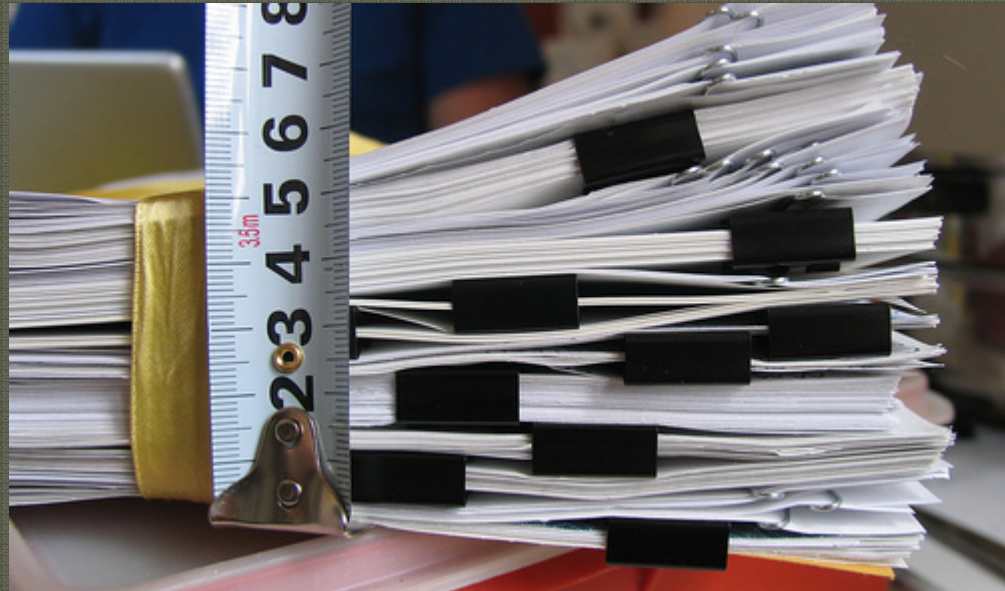
- ◉ What companies' creative expressions are...
- ◉ Which creative expressions are protected under copyright and which under related rights...
- ◉ What benefits of such protection are...
- ◉ Who the owner of creative expressions is...
- ◉ What the term of protection is...
- ◉ How to use copyright works of others...

Companies' Creative Expressions

Written



- Articles
- Texts
- Books
- Novels
- Poems
- Manuals
- Guides
- Brochures
- Essays
- Plays



Companies' Creative Expressions



Visual



- Graphic
- Industrial
- Design
- Photos
- Art works
- on labels

Companies' Creative Expressions

Spoken



- Lectures
- Speeches

Sound-
based



- Ring tones
- Music



Companies' Creative Expressions



Motion-based



- Drama
- Films
- Dance
- Ads

Companies' Creative Expressions

3D



- Buildings
- Industrial Design

Digital



- Computer Programs (source code & open code)
- Databases



Copyright Protects

- ◉ Creative expression which is:
 - Original
 - Expressed in a certain objective form
- ◉ No registration required, but e.g. in USA – registration (not mandatory, but worthy)

Copyright Protects

- Originality:
 - “genuineness”
 - “distinctiveness”
- Regardless of its artistic, scientific or some other value, its purpose, size, content, etc.

‘Related Rights’ Protect:

- ◉ Rights of performers
(actors, musicians, singers, dancers...)
- ◉ Rights of phonogram producers
(CD-producing companies, etc.)
- ◉ Rights of broadcasting organizations
(TV, broadcasting organizations)

Copyright Does Not Protect:

- ⦿ Ideas, procedures, methods, mathematical concepts or systems
- ⦿ Facts (scientific, historical, biographical)
- ⦿ News whether published, broadcast or publicly announced
- ⦿ Names, short phrases or slogans
- ⦿ Official legal documents issued by state bodies or state authorities (laws, decrees, regulations, international agreements, judicial judgements)

Benefits of Copyright Protection

- Possibility to protect various original creative expressions from the moment of their creation
- Granting of a number of exclusive rights:
 - Economic Rights (for a limited period of time)
 - Moral Rights (for an unlimited period of time in most of the countries)

Benefits of Copyright Protection

- Possibility to control further use (in any form and by any means) of protected creative expressions
- In other words, possibility to prohibit the others from use without a permission
- Getting revenues from the use with permission
- Licensing, transfer of rights, assignment

Using your own copyright

- Making copies and selling them
- Importing or exporting
- Renting, leasing or donating
- Communicating copies to the public
- Making them available to the public, incl. digitally (on the Internet)
- Translating or adapting them
- Licensing, transferring, assigning the rights

Using your own copyright

- ◎ **License** → rights, economic use, exclusive or non-exclusive, keep ©
- ◎ **Sell** → original work/copies, no economic use, “first sale” doctrine, keep ©
- ◎ **Assign** → rights, transfer of ownership

Copyright Protects Moral Rights

- ◉ Right of Authorship
 - ◉ Right to be Named
 - ◉ Right of the Work's Integrity
- ≠ in Anglo-American legal system which does not recognize moral rights

Where copyright is valid?

- ◉ Protection is limited to the territory of a country of origin
- ◉ Minimum standards of protection or some aspects are regulated by:
 - International treaties (1886 Berne Convention, 1961 Rome Convention, 1994 TRIPS Agreement, 1996 WIPO Treaties); and
 - Regional legal acts (e.g. EU directives and regulation)
- ◉ Principal of national treatment: a country extends the same protection to foreigners that it accords to its own authors

Company's Creative Expression: Case Study 1

Company HomeFood&Good is in business for household materials and books. It collects local recipes of Sri Lanka's national dishes and plans to publish a book with collected recipes. Next week the company's manager is planning to visit the local publisher and show the book's first draft. However, the manager wants to show that all rights to this book and recipes described in it belong to the company.

Can this wish of the manager be fulfilled?



Company's Creative Expression: Case Study 2

Company SpeedYSolutions, Co. decided to create a set of rules (Guide) within the company. Guide would establish working hours, clothing, ethical rules by company's employees. The manager asked two employees to draft that Guide.

Besides, the manager asked them to prepare a weekly online magazine with the most important news from the company's business week, also news from the same field of business in the country and worldwide.

Will the Guide and weekly online magazine be protected under copyright?

Company's Creative Expression: Case Study 3

Company Creative Solutions, Inc. would like to start producing T-shirts with photos of celebrities on them. The company selected a few photos, but the manager of the company wants to remove information about photographers from the bottom of the photos and to change colours of those photos, so that they fit to the colours of T-shirts.

Can the company do that?

Who's the owner of creative expression?

“an author” ≠ “an owner” of copyright or related rights

The ownership question may be regulated differently in different countries in cases of:

- ◉ Works created by employees as part of their job
- ◉ Commissioned or specially ordered works
- ◉ Works created by several authors
- ◉ Derivative works

Works Created by Employees

In the company which deals with building construction and architecture business, an employee creates design of buildings during working hours and using the company's software.

1 - In some countries, an employer will automatically own copyright, unless otherwise agreed.

2 - In others, the transfer of rights to employer (the company) should be specified in an employment contract.

Commissioned or Specially Ordered Works

The design company signed a contract with the advertisement company and commissioned a creation of an advertising booklet for itself (about its business, people, projects, etc.). The advertisement company created a very informative and aesthetic booklet with photos and texts. Later, the design company decides to use some photos and texts from that booklet on its website.

- 1- In most countries, the advertisement company will own copyright in the booklet, whereas the design company will be able to use the work for the purposes for which the booklet was commissioned.
- 2 - In order to use photos or texts from the booklet on its website, the design company needs to get a permission from the advertisement company.
- 3 - The scope of use should be clearly defined in the commission contract between two companies.

Works Created by Several Authors

One company decided to write an e-dictionary with two other companies. They agreed to write separate sections of that dictionary which will then be combined together, so that the fluent piece of work is made.

- 1 – All three companies will become joint authors of the e-dictionary. Their intent to make a joint work is very important here.
- 2 - In some countries, the further use of the book will need the common consent of the three authors.
- 3- In some others (like US), the authors can decide on exercise of their rights separately, but each will need to share profits with others.
- 4 - It is advisable for the authors to make a detailed written contract.

Works Created by Several Authors

Three software companies decided to create three computer programs, used for calculating salaries, and publish them as one CD.

1 - If they do not intend these computer programs to be a joint work and would like use them separately, this will be a **collective work**.

2 – In that case, each company will own copyright in the part of software it created.

Works Created by Several Authors (Derivative Works)

The company decided to draft an electronic game based on the book of the worldwide famous novelist Paulo Coelho.

1 – Paulo Coelho's copyright is protected; therefore, in order to create such electronic game, his **permission** is first required.

2 – The general rule is that independent copyright can extend to those parts of derivative work which are original (to software elements in this specific case).

How long copyright works are protected?

Work was
created

Author
dies

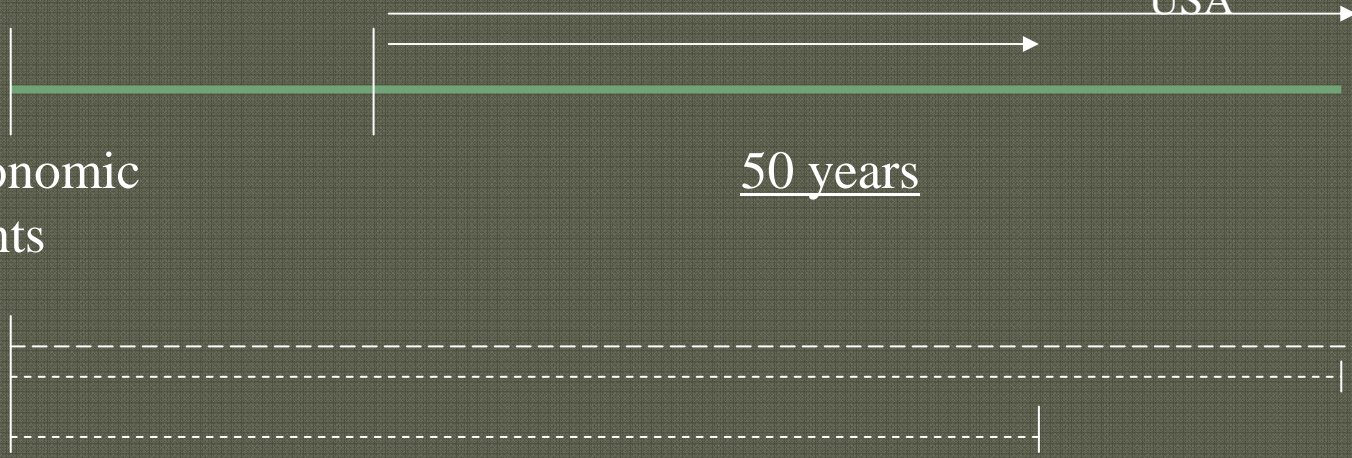
70 years
In Sri Lanka, EU,
USA

Economic
rights

50 years

Moral Rights

In some countries
perpetual, in others
expire together with
economic rights (in
Sri Lanka)



How long related rights are protected?

50 years in Sri Lanka (the same in EU, in other countries – 20 years) from the end of the year in which:

Performance took place (for those performances which are not fixed in phonograms)

(Moral rights of performers are perpetual or lapse together with economic rights)

Fixation was made (for phonograms and performances fixed in phonograms)

A broadcast took place

Using Copyright Works of Others

General Rule:

for the use of works in which someone else owns copyright the owner's **prior consent (permission)** is required.

Using Copyright Works of Others

- ◉ Allowed free use (“fair use” concept):
 - Content or material is not protected under copyright/related rights
 - A work is in public domain
 - Personal or private use
 - Scientific, teaching, research
 - Citation
 - Parodies or criticism
 - Other non-commercial uses

Using Copyright Works of Others: Getting a Permission

1 Step - Clarification if a work is protected

Checking copyright notices, if any
Searching in the register
Contacting CMO(s)
Contacting agencies/agents



2 Step - Identification of copyright owner

Contacting publishers, record producers, agents, distributors, legal representatives, etc.



3 Step - Negotiating and concluding licensing agreement

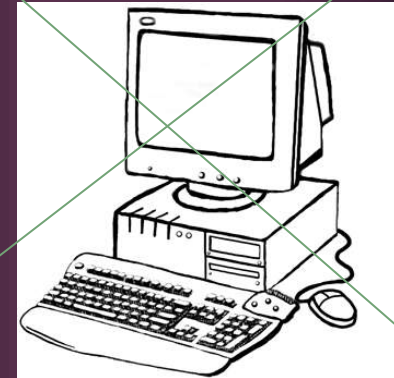
Terms and conditions, scope of right being used, remuneration, a term, etc. should be clearly defined

Case Study: Software License

*Software
License
(for 10 PCs)*



+5



+2

Creative Expressions: Checklist

| | |
|---|-----|
| Copyright grants authors, artists and other creators legal protection for various type of their creative expressions. | YES |
| Copyright protects works in a printed form only. | NO |
| Related rights are protected from the moment of their existence. | YES |
| Economic rights protect authors' economic interests, whereas moral rights protect their reputation. | YES |
| I can freely use copyright works for citation. | YES |
| Authors and owners of joint copyright works are always the same. | NO |

Thank you!
Questions?..