

**WONGPARTNERSHIP**

**The Role and Contribution of Copyright and Related Rights and Collective Management Societies for Economic Growth**

LAM CHUNG NIAN

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SINGAPORE | CHINA | MIDDLE EAST  
CONTACTUS@WONGPARTNERSHIP.COM WWW.WONGPARTNERSHIP.COM  
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**WONGPARTNERSHIP**

**Outline**

- Copyright
  - Treaty Sources
  - Nature of Rights
- Collective Management Societies
- Case Studies

This presentation is for general information only and does not constitute legal advice. Please seek specific legal advice before acting on the contents set out herein.

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**WONGPARTNERSHIP**

**Treaty Sources – Copyright**

- Berne Convention
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Arts 9 – 13
  - compliance with the basic standards of the Berne Convention
  - expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.
  - computer program protection
  - databases and other compilations of data or other material where by reason of the selection or arrangement of their contents constitute intellectual creations (not extending to the data or material itself)
  - Commercial rental arrangements in respect of computer programs and, in certain circumstances, of cinematographic works
  - Three step test: Article 13 – limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder. Must be applied in a manner that does not prejudice the legitimate interests of the right holder.

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### Treaty Sources – Related Rights

- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Art 14
  - protection of performers, producers of phonograms and broadcasting organizations
    - unauthorized fixation of their performance on a phonogram (e.g. the recording of a live musical performance)
    - unauthorized broadcasting by wireless means and the communication to the public of their live performance.
  - exclusive reproduction right in relation to phonograms and rental arrangements
  - broadcasting organizations having right to prohibit the unauthorized fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of their television broadcasts.

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### Treaty Sources – TRIPS Agreement

- LDCs
  - Application can be deferred for 10 years from entry into force and extensions upon request (Art 66.1)
  - WTO TRIPS Council has deferred implementation by LDCs to 1 July 2013 (and to 2016 for pharma products)
  - LDCs encouraged to provide specific technical and financial assistance needs to implement TRIPS
  - For more resources, see <http://www.iprsonline.org/>

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### Nature of Copyright

- Exclusive rights conferred by law
  - Authors' works
    - eg. literary, musical, artistic, dramatic works
  - Other subject matter
    - eg. films, sound recordings, etc.
- Only the owner can do or authorise doing of certain acts in respect of his works or other subject matter.
- Limitations
  - Originality
  - Covers expressions, not ideas

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### Exclusive Rights in Works

*Literary, dramatic or musical works*

- to reproduce the work in a material form;
- to publish the work if the work is unpublished;
- to perform the work in public;
- to communicate the work to the public;
- to make an adaptation of the work;
- to do any of the above in relation to an adaptation of the work;

*Artistic works*

- to reproduce the work in a material form;
- to publish the work;
- to communicate the work to the public

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### Exclusive Rights in Other Subject Matter

*Sound Recordings*

- to make a copy of the sound recording;
- to enter into a commercial rental arrangement in respect of the recording;
- to publish the sound recording if it is unpublished;
- to make available to the public a sound recording by means of, or as part of, a digital audio transmission.

*Cinematograph films*

- to make a copy of the film;
- to cause the film, insofar as it consists of visual images, to be seen in public;
- to communicate the film to the public.

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### Dealings in Copyright

- Copyright treated as personal or movable property
- Common dealings in copyright
  - Assignments
  - Licences
  - Sub-licences
  - Security
  - Wills

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### Dealings in Copyright

- Assignments
  - Whole
  - Partial
    - Scope
    - Territoriality
    - Duration
  - Future
- Licences
  - A permission to do the acts licensed
  - Ownership of the copyright not acquired
  - May be exclusive or non-exclusive

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### "Infringement of Copyright"

- Typical definition of infringement
  - a person who, not being the owner of the copyright,
  - without the licence of the owner of the copyright,
  - does or authorises the doing
  - of any act comprised in the copyright.

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### "Infringement of Copyright"

- Infringing act is done in relation to
  - whole or
  - substantial part
  - no need for reprographic reproduction
- Substantiality
  - "What", rather than "how much" is taken
  - Not merely physical amount, but substantial significance
    - Elements contributing to originality
    - Amount of skill effort and labour
    - Object of the taking
    - Use of the part made
  - Competition with the original work

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### Fair Dealings

- “Fair Dealing”
  - Purpose and character of the dealing, including whether such dealing is of a commercial nature or is for non-profit educational purposes;
  - Nature of the work or adaptation;
  - Amount and substantiality of the part copied taken in relation to the whole work or adaptation;
  - Effect of the dealing upon the potential market for, or value of, the work or adaptation; and
  - Possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price.
- Examples of fair-dealing
  - Research or study
  - Criticism or review
  - Reporting current events

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### Copyright Licensing

- “All Rights Reserved”
  - Proprietary licensing
  - Most forms of commercial publishing
- “Some Rights Reserved”
  - Open-source licences
  - Creative Commons
- “No Rights Reserved”
  - Public domain

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### Some Rights Reserved Licensing Models

- FOSS Licensing - four essential freedoms:
  - run the program as you wish, for any purpose.
  - study the source code and change it to make it do what you wish.
  - freedom to make copies and distribute them to others when you wish.
  - publish or distribute modified versions when you wish
- “Copyleft licensing” – share & share alike
  - Eg. GPL
- “Permissive” licences are also available
  - Eg. BSD

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### Creative Commons Licences

#### Licensee Requirements

- to get permission to do any restricted acts — e.g., make a commercial use, create a derivative work;
- to keep any copyright notice intact on all copies of the work;
- to link to the license from copies of the work;
- not to alter the terms of the license
- not to use technology to restrict other licensees' lawful uses of the work

#### Licensee Rights

- to copy the work
- to distribute it
- to display or perform it publicly
- to make digital public performances of it (e.g., webcasting)
- to shift the work into another format as a verbatim copy

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### creative commons Licensing

#### Attribution

- You let others copy, distribute, display, and perform your copyrighted work — and derivative works based upon it — but only if they give credit the way you request

#### Share-Alike

- You allow others to distribute derivative works only under a license identical to the license that governs your work

#### Non-Commercial

- You let others copy, distribute, display, and perform your work — and derivative works based upon it — but for noncommercial purposes only.

#### No-Derivatives

- You let others copy, distribute, display, and perform only verbatim copies of your work, not derivative works based upon it.

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### CC Licence Basics

- Every licence
  - applies worldwide
  - lasts for the duration of the work's copyright
  - is not revocable
- Every licence will help owners
  - retain copyright
  - announce that other people's fair use, first sale, and free expression rights are not affected by the license.

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### Attribution

- Most accommodating licence



### Attribution – Share Alike

- Compares to open source



### Attribution – No Derivatives

- No adaptations allowed, work must be unchanged

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### Attribution Non-Commercial



### Attribution Non-Commercial Share Alike



### Attribution Non-Commercial No Derivatives

- Most restrictive licence

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## Collecting Societies

- Intermediary between owners and users
- Allows for collective representation of owners and convenient licensing for users
- Promotes collection of revenue worldwide through reciprocal arrangements
- Common roles for IP exploitation are centralised
  - Monitoring use
  - Negotiations with users
  - Licensing
  - Collection of revenue
  - Distribution

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### Collecting Societies

- Can cover a wide range of licensing
  - Book publishing
  - Music publishing
  - Phonograms
- Typical coverage
  - Performance rights
  - Reprographic copying
- Models:
  - Voluntary licensing through mandates
  - Legislated licensing
  - Statutory licensing
  - Levy licensing
- Balanced against copyright tribunals who can have oversight of licence schemes and equitable remuneration

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### Collecting Societies

- International umbrellas
  - International Confederation of Authors and Composers (CISAC)
  - International Federation of Reproduction Rights Organization (IFRRO)
- Developing country concerns
  - IFFRO “Type B” bilateral agreements
    - Repertoires are exchanged, but remuneration collected remains in the country. Will enable RROs in developing countries to distribute both local and “foreign” royalties to their own rights holders.
  - CISAC Common Information System, allowing for unique identification of works (and ownership)

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### Copyright as an Engine for Growth

- Nashville, TN USA one of the least developed areas
- Primarily farming and agricultural community but with a strong country/folk music tradition
- Ralph Peer pioneer in the Nashville recording industry
- Scouted local talent and sold country music throughout the USA
- Peer took only \$1 per year in salary but in exchange he obtained the right to control the copyrights in the compositions he recorded.
- Growth in popularity in country music in the US led eventually to Nashville becoming “Music City USA”

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### Africa Music Project

- World Bank embarked on Africa Music Project
  - creative clusters can be powerful drivers of development
  - play to local strengths, taking advantage of knowledge, skills, and forms of expression that arise from local culture
  - do not require cutting-edge technology, large capital investments, or a robust infrastructure
  - typically does not require the sort of extensive formal educational system that still remains unavailable to the poor in many less developed countries.
- UNCTAD Study
  - Ghanaian music industry alone could generate \$53 million a year from foreign sales if local conditions were more amenable to supporting creativity.

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### Senegal

- World Bank Project with 3 objectives
  - increase the earnings of African musicians.
  - support African culture and demonstrate that such support would boost the economy
  - find ways to make the WTO agreement on intellectual property more supportive of development
- Issues
  - Radio stations not paying royalties
  - Rampant levels of piracy
  - Weak collection ability

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### Senegal – Programme Initiatives

- USD 46m credit
- Copyright reform
- Anti-piracy measures – hologram programme and public education
- Collection of royalties from radio stations to provide additional income streams
- Capacity building
  - Education
  - Standard contracts
  - Talent development
- Music tourism initiative
- See [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/04/09/000090341\\_20040409102946/Rendered/PDF/284100PA PER0Poor0peoples0knowledge.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/04/09/000090341_20040409102946/Rendered/PDF/284100PA PER0Poor0peoples0knowledge.pdf)

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Copyright - Growth Promotion

- Can attach to authors as individuals with relatively low investment in creation
  - Writers, artists, etc can enjoy copyright protection
- Helps authors preserve integrity and authenticity of their works
- Encourages creativity, promotes local culture through providing a means for livelihood
- Provides a legal framework for authors to control permitted usage of their works

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Thank You!

Lam Chung Nian  
DID: +65 6416 8271  
[chungnian.lam@wongpartnership.com](mailto:chungnian.lam@wongpartnership.com)

**WONGPARTNERSHIP LLP**  
One George Street #20-01  
Singapore 049145

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