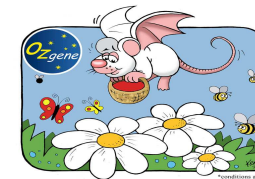


WELCOME TO ...

Copyright for Business



Australian Spring Special
15% off the generation of
Knockout Mice*

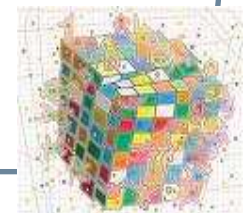


KIPO-KWIA-WIPO INTERNATIONAL
WORKSHOP FOR WOMEN INVENTORS AND ENTREPRENEURS 2010

SEOUL, MAY 10 to 13, 2010
LARYSA KUSHNER

Overview

1. **What is Copyright**
2. **Why Copyright is Relevant**
3. **How to protect**
4. **How to Generate Income With Copyright**
5. **Using the Works Owned by Others**



1. What is Copyright ?



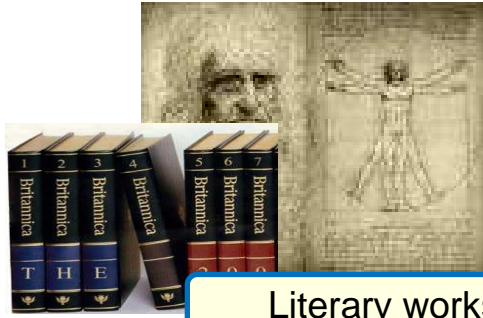
What is copyright?

Grants authors, composers, and other creators legal protection for their **creative** expressions in literary, scientific and artistic domain ('works')

Gives **'bundle'** of exclusive rights, which allow owners to control the use of their original works in number of ways and to be remunerated

Provides **'moral rights'** which protect the author's reputation and integrity

Copyright works



Literary works



Musical works



Artistic works



Photographic works



Maps, charts, diagrams,
technical drawing



Computer programs,
original databases



Motion pictures



Dramatic works

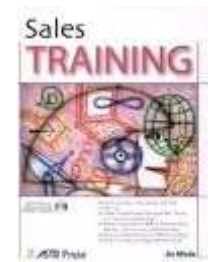
Copyright works in business

- Trade and product catalogs
- Artwork and text on product literature, labels and packaging
- Marketing and advertising materials (on paper, billboards, websites, accounting forms)
- Computer programs
- Content on websites



Copyright works in business

- Instruction sheets or operating manuals for machines or consumer products;
- User, repair or maintenance manuals for various types of equipment;
- Sales training program captured on videocassette and CDs
- Newsletters
- Sketches, drawings and maps



- Copyright protects works that are expressed in **print** as well as those created or stored in **electronic or digital media**

Some things **not** protected by copyright

- Ideas, concept, methods of doing things, facts or raw information



? Patents, Trade Secrets

- Company and business names, titles, slogans, short phrases

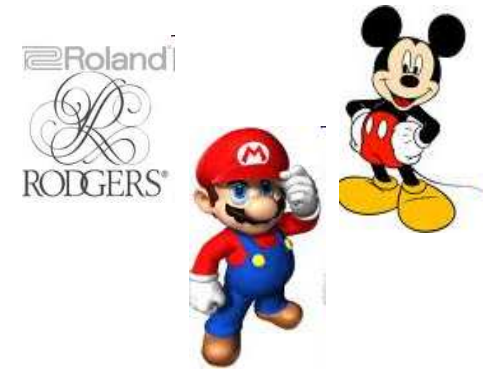


? Trade Marks, Unfair Competition

- Government works
 - Statutes, judicial opinions, etc

Some things protected by copyright and other areas of laws

- **Logos**
- **Characters in literary and graphic form**
 - A creative image might be protected by CR
 - Might be registrable as TM



- **Works of applied art**
 - Varies significantly from country to country
 - Might be overlapping with Industrial Design



- Often limited for three-dimensional functional articles
- The pictorial, graphic or sculptural features that can be “identified separately from the utilitarian aspects” of an article



Exclusive Rights

Economic Rights (Use)

- Reproduce or make copies
- Distribute to “the public”
- Communicate to “the public” and make available on the Internet Display or perform to “the public”
- Adapt and translate
- Sell, rent*, lend*

Assignment or License

* Generally applies only to certain types of works: Cinematographic works, musical works, or computer programs.

Moral Rights

- Right of paternity (authorship): acknowledgement
- Right of integrity: object against mutilation and/or distortion

Can Not be Transferred

Waivers?



What are Related Rights?

Performers



Actor, musician, singer, dancer, or any person who acts, sings, delivers, declaims, plays and otherwise performs

Producers of Sound Recordings



Person who, or a legal entity which, first fixes the sounds of a performance or other sounds

Broadcasting Organizations



Organization transmitting any program by any wireless means for public reception of images and sounds

in their performances

in their recordings
(cassette recordings, compact discs, etc.)

in their radio and television programs and in Internet broadcasts such as 'podcasts'

Fixate
Directly Broadcast or Communicate to the Public

Reproduce
Import
Distribute the Duplicates

Rebroadcast
Fixate
Reproduce

** Limited Moral Rights*

How it works?

A song of Whitney Houston “Can't Live If Living Is Without You ”

A piano concerto by Beethoven

- **Copyright** protects
 - the **music of the composer** and
 - the **words of the writer**, and ...



- **Related rights** would apply to .. the **performances** of the musicians and singers who perform the song

the **performances** of the musicians and singers who perform the song

the **sound recording**, owned by the producer of the sound recording in which the song is included

the **broadcast program**, owned by the organization that produces the program in which the concert/song is included

- **Automatic**
Fixation generally required
- **Free**
- Copyright subsists **worldwide**: Berne Convention
- **Term of protection**:
Life author + 50 years p.m.
Exceptions



- **Registration** might be available – **Why to use?**
- **National** law applies
- **Heirs**



2. Why is Copyright Relevant to Your Business?



1. Control of Commercial Exploitation

- **Exclusivity** over the use of copyright protected works helps business to gain and maintain **competitive edge** in the marketplace

All original works may not be copied or exploited commercially by others without the prior permission of the rights owner



2. Generate Income

- **Copyright is a tradable asset** that may be owned, bought and sold the same as other types of property
 - sell copies of the work
 - sell copyright in the work
 - permit (license) others to use your copyrighted work
- Can have an important **long-term value** for your business



3. Raise Funds

- Companies that own copyright assets may be able **to borrow money from a financial institution by** using such a bundle of copyrights as a collateral.
- E.g., portfolio of distribution rights to movies or developed software or computer games



4. Take action against infringers

- **Copyright law enables to take legal action against anyone encroaching on the exclusive rights**
- **Remedies/Sanctions:**
 - Stop infringement (= unauthorized use, copying)
 - Obtain monetary relief
 - Destruction of infringing works
 - Criminal sanctions



5. Use Works Owned by Others

- **May enhance the value or efficiency of your business**



- play music in restaurant, bar, club, retail shop or store , hair and beauty salon, hotel, health, leisure, sport and fitness place; premium and mobile telephone line



- use computer software or databases created by others
- illustrate your website or catalogs with photographs taken by others

- **Requires, in most cases, [prior permission](#) from the copyright owner**

6. Effective Marketing and Advertising

Enticing marketing or advertising materials requires use of **creative text, artwork, logos**, etc., which are all protected by copyright.

In the **digital environment**, companies are turning to the Internet and use copyright protected works on their websites **to get noticed, build loyalty** and ultimately **boost sales**

- **Written text**
- **Images: photos, drawings, charts**
- **Short movies and video clips**
- **Music, radio**
- **Computer programs and interactive games**
- **Directories, databases, lists**

3. How to Maximize your Copyright Protection in Your Business' Creations?



1. Ascertain Ownership

- Don't assume you own the copyright just because you paid for it to be created or you have ownership on a physical copy of a work
- Why might you want to own the copyright in certain materials:
 - You want to license it to the others
 - You want to prevent others from using the materials
- **General Rule:** The creator (the author) of the work is the first owner
 - Limited exceptions, e.g. films and videos

Written Contracts

1. Ascertain Ownership

- **Author ≠ Right holder (ownership)**
 - But moral rights...
- **Work created by your employee**
 - Owner = employee
 - Owner = employer, automatic transfer
 - Owner = employer, assignment needed
 - Different rules for computer programs
 - Employee or independent contractor ?
 - Work created as a part of job?



Written Contracts

1. Ascertain Ownership

Commissioned work (to be created by freelancers and other organizations for you):

- Till **other is not stated in written in the contract** the general rule applies



it means you will get just an Implied licence for the purposes for which the work was commissioned

- **Limited exeptions:** films and videos, sound recordings
- **Consider if it is desirable or not for you to own the copyright :**
- **Whether or not you might want**
 - to prevent unauthorized uses
 - to license the work to the third parties
 - to re-use the commissioned work for the same or different purposes in future
 - How much you want to pay

Written Contracts



2. Prove Ownership

- Deposit or register your work with copyright office
 - if this option is available under national law
- Deposit copy with bank / lawyer
- Send yourself copy in sealed envelope
- Copyright notice

Torpen © 2007-2010

- Standard Identification Numbering System
 - International Standard Book Number (ISBN)
 - International Standard Recording Code (ISRC)
 - Etc.



3. Protect Works in Electronic Form

- **Mouse-click contract**
- **Mark with Rights Management Information**
 - Label (copyright notice, warning label)
 - Digital Object Identifier
 - Time stamp
 - Digital watermark
- **Technological protection measures**
 - Encryption
 - Access control or conditional access systems
 - Versions of lower quality



What to do if you think your copyright has been infringed ?

- **Get legal advise**
- **Decide what you want**
 - That you gain a new licensee
 - That the unauthorised use stop
 - That the illegal or master copies of your work be delivered to you or disposed
 - That you are paid damages
- **Contact the infringer**
 - “Cease and desist” letter
- **Consider formal legal action**



What to do if you think your copyright has been infringed ?

- Bringing **legal proceedings** against an the one who use your works without authorization (**infringer**) is advisable only if:
 1. you can prove that you own the copyright in the work;
 2. you can prove violation of your rights;
 3. the value of succeeding in the legal action outweighs the costs of the proceeding



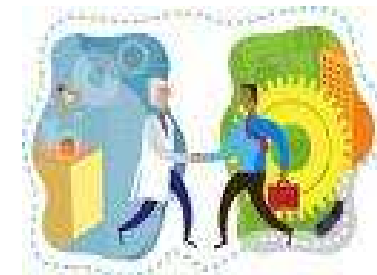
4. How to Get the Most out of Your Copyright in Your Business' Creations?



How to get the most out of your copyright?

To Exploit the Work by Yourself	To License the Copyright	To Sell (Assign) the Copyright
e.g. manufacture and sell copies of your copyright work		
- You don't lose your Copyright	- Exclusive	- You lose your Copyright
- Exhaustion	- Nonexclusive	

- **Business' Activities**
- **Buyers' Interest**
- **Price**



When you should consider licensing or selling your works?

The exclusive rights can be divided and subdivided and licensed or sold to others in just about any way you can imagine:

- by type of use (a part or the whole bundle of rights)
- by territory
- time
- market segment
- media
- content, etc.

You can grant different licenses/sell copyright to different people or companies, at the same time

Why should business consider

Licensing Copyright	Selling (Assigning) Copyright
<p>Income: Can generate lucrative fees and royalties</p> <p>New markets: Allows business to enter into new product categories or in new geographical areas in a relatively risk-free and cost-effective way</p> <p>Marketing tool: Increases the business' exposure and recognition</p>	<p>If no alternative</p> <p>If adequate price</p> <p>Loss of all future income-earning potential</p>

Licensing Strategy

Define precisely the **works** in which the right are granted

- If possible attach a copy of the work in question

Define the **scope of activities** permitted under the license as **precisely as possible**

- Generally, limit the scope to specific needs and interests of licensee
- Non-exclusive

Handle all aspects yourself

- Standard terms and conditions
- Individually with every licensee



How it works?
Example of an artist



Owner of **copyright**: has great power to define how her artworks can be used

Important to consider range of possibilities to **commercialize** the artworks

Possible to simultaneously grant various **licenses** for one artworks:

To
different
users

For specific
manners of
exploitation

For
limited
period of
time

In limited
territory

For
specific
purpose



Licensing Strategy

Entrust administering of (some) your right to the licensing agent/agency

- Book publisher, record producer

Collective Management Organizations (CMOs)

- **Per type of work and per country (music, visual art, films, etc)**
- **Core activities:**
 - documentation of works of its members
 - licensing and collecting royalties
 - gathering & reporting information on the use of the works
 - monitoring and auditing
 - distribution of royalties to its members

Collective Management Organizations (CMOs)

- **Advantages:**

- intermediaries between users and owners
- one-stop shop
- collective bargaining
- blanket license
- license of material in digital form
 - including use in Internet and in mobile technologies
- cultural and social initiatives



Example: CMO in Music Industry

The Performing Right Society (*PRS for Music*), United Kingdom

Have been managing the rights of authors, composers and music publishers:

Reproduction rights: to make copies of the musical compositions and/or sound recordings for sale (for CDs, DVDs, any other physical items)

Performance rights: to perform music live (for your business workplace or venue)

Right to broadcast music: to broadcast music on television or radio, mobile and online services and products (programs, websites and services)

The first collecting society in the world to license YouTube

5. Using Works Owned by Others



When do you need a permission

- 1. Work is covered by copyright / related rights**
- 2. Work is not in the public domain**
 - Copyright protection period expired
 - Work cannot be protected (e.g. Title)
 - Owner has explicitly abandoned his rights
- 3. Planned exploitation implies use of rights granted by copyright / related rights**
- 4. Intended use is not covered by and goes beyond 'fair use', 'fair dealing', exceptions and limitation**

Free Uses and Limitations

- personal use
- quotations
- parodies
- criticism
- use for teaching purposes
- news reporting
- scientific research
- libraries
- certain cases of reproduction



Possible involvement into the copyright violation

- By selling or otherwise commercially dealing with an item that violates someone's copyright (such as a pirated CD)
- Importing a copyright item for commercial purpose

Using just a part

- “Substantial” Part / Features of the Work
- Quality rather than Quantity Assessment
- No violation for use of non-original or stock elements

Alterations or additions do not avoid infringement

One thing might contain several copyrights

How reduce risk of infringement?

- Educate employees
- Obtain written licenses/assignments, where needed, and ensure that employees are familiar with their scope
- Have a clear business or company position on copyright compliance
- Mark equipment that could be used to violate copyright with a notice
 - Photocopiers, computers, CD and DVD burners, video recorders
- Prohibit employees from downloading copyright protected material from the Internet on office computers without authorization



Conclusions

- **Maximize your copyright protection**
- **Ascertain copyright ownership**
- **Avoid infringement**
- **Get the most out of your copyright**

Thank you for your attention!



Any Question?

WIPO's website for SMEs :

www.wipo.int/sme

Contact address: larysa.kushner@ehu.it