

Creative Expression – Benefiting From Your Copyright and Using the Copyright Works of Others in Your Business

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Susanna H.S. LEONG

Associate Professor & Vice Dean

NUS Business School, National University of Singapore

What is COPYRIGHT?

- **A right conferred by the law to prevent others from copying works of intellectual and creative efforts.**
- **It is given to authors of original literary, dramatic, musical and artistic works.**
- **It is also given to owners of other works like sound recording, films, broadcasts, cable programmes and typographical format of published editions of works.**

Basic Principles

- **Copyright does not protect ideas, it only protects the expression of ideas.**
- **All works will only be protected by copyright if the requirement of fixation is satisfied.**
- **This essentially means that the works must be reduced to writing or some other material form.**
- **Copyright is infringed only if there is copying.**
- **It does not confer on the owner an absolute monopoly over his work like patent does.**

Basic Principles

- **Copyright is a personal right to prevent copying and it must be distinguished from the property right granting ownership over the property in which the copyright resides.**
- **In order to enjoy copyright in Singapore, there must be a connecting factor with Singapore.**
- **Copyright arises automatically.**
- **There are no formal requirements of registration to secure copyright.**

Basic Principles

- **Copyright can exist in published and unpublished works.**
- **Copyright is not a single right.**
- **Instead, it is a **bundle of rights** in one work and the totality of these different rights is conveniently referred to as “the copyright in the work”.**
 - A product such as a cinematographic film may comprise a number of different ‘works’ (such as the novel from which a screenplay is written; the screenplay itself; the songs and sound recordings incorporated in the film; and the performances by the actors) and copyright (in the form of a multiplicity of rights) subsists in each of these works independently.
 - Therefore, it is important to dissect the product so as to ascertain the underlying works and the exclusive copyrights conferred on them.

Preserving the Balance between Authors' Exclusive Rights and the Public's Right of Access

- **Fundamentally important for the law to preserve the right balance between authors'/copyright owners' exclusive rights to exploit their works and the copyright users'/public's right of access to information and ideas.**
 - (a) The idea/expression and the fact/expression dichotomies;
 - (b) The need to prove copying for copyright infringement;
 - (c) A fixed period of copyright protection;
 - (d) Permitted acts which do not constitute copyright infringement;
 - (e) Competition laws;
 - (d) The international obligation in TRIPS to confine 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.

Materials protected by copyright

Two main categories

Materials protected by copyright

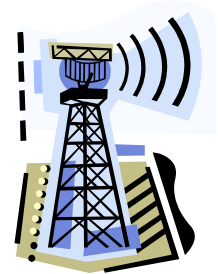
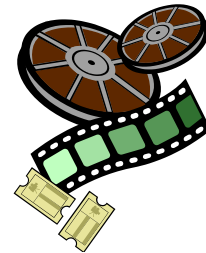
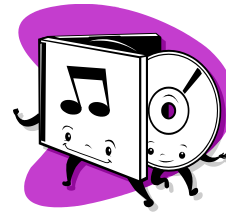
- **Authors' works:**
 - original literary work;
 - original dramatic work;
 - original musical work; and
 - original artistic work



Materials protected by copyright

Entrepreneurial copyright or neighbouring rights :

- sound recordings;
- cinematography films;
- television broadcasts and sound broadcasts;
- cable programmes; and
- published editions of works.



Originality

- **To qualify for copyright protection, a work must be original**
- **The meaning of “original”**
- **Differs from jurisdiction to jurisdiction**
- **In general, it means originates from the author, not a slavish copy of another person’s work and there is sufficient skill, labour or judgement in the creation of the work**
- **A fairly low threshold**

What is a literary work?

- A literary work is a work which comprises of one or more words which are designed to offer information, pleasure or instruction to the reader.
- Literary merit is completely irrelevant.
- A wide range of diverse materials has been held to be protected as a type of literary work: registered list of bills of sale, trade catalogues, railway timetables, mathematics examination papers, a compilation of radio and television schedules, letters to newspapers, instructions, translations etc.
- In certain jurisdiction, literary work includes a compilation in any form and a computer program.

What is a dramatic work?

- **Dramatic work includes -**
- **a. a choreographic show or other dumb show if described in writing in the form in which the show is to be presented; and**
- **b. a scenario or script for a cinematograph film, but does not include a cinematograph film as distinct from the scenario or script for a cinematograph film.**
- **Examples: plays, mime and dance**

What is a musical work?

- The authors in “Modern Law of Copyright” defines a musical work to be "the product of the mind of human author which is intended to be performed by the production of a combination of sounds to be appreciated by the ear for reasons other than linguistic content."
- What about computer generated music or sounds?
- Examples: songs, operas and musicals
- Songs, operas and musicals - two distinct copyright

What is an original artistic work?

- **Artistic work refers to:**
 - **a. paintings, sculptures, drawings, engravings, photographs, irrespective of artistic quality;**
 - **b. buildings and/or models of buildings, irrespective of artistic quality; and**
 - **c. works of artistic craftsmanship that are not within (a) or (b).**

What is an original artistic work?

- "Drawings" include "any diagram, map, chart or plan".
- "Photograph" is defined as meaning a product of photography or of a process similar to photography.
- What is a painting?
- Sculptures include casts or models made for purposes of sculptures.
- Engraving includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph.

Entrepreneurial copyright

- **What is a sound recording?**
- **What is a cinematography film?**
- **What is a television broadcast?**
- **What is a sound broadcast?**
- **What is a cable programme?**
- **What is a published edition of works?**

To Obtain Copyright Protection

- **No need for registration, the protection arises automatically if certain connecting factors are satisfied.**
 - **Author is a qualified person - a citizen or a person resident in the country in which copyright protection is sought.**
 - **First publication within jurisdiction**
 - **First made within jurisdiction**

The Duration of Copyright Protection

- The duration of copyright protection varies depending of the works involved.
- In most jurisdictions, the duration of copyright for a work (i.e. literary, dramatic, musical and artistic work other than a photograph) is life of the author plus 50 years. But, in some countries, like Singapore, Europe and the US, the period of protection is longer – life of the author plus 70 years.
- In Singapore, copyright subsisting in a photograph shall continue to subsist until the expiration of 70 years after the expiration of the calendar year in which the photograph is first published.

The Duration of Copyright Protection

- In Singapore, the duration of copyright in a sound recording is 70 years after the recording is first published.
- In Singapore, the duration of copyright in film is 70 years after first publication.

The Duration of Copyright Protection

- In Singapore, duration of copyright in a television broadcasts and sound broadcasts is 50 year after first broadcast.
- In Singapore, duration of copyright in cable programmes is 50 year after the first inclusion in the cable programme service.
- In Singapore, the duration of copyright for a published edition of works is shorter, 25 years from the year in which the edition was first published.

Who owns the copyright?

- In the case of a work (i.e. literary, dramatic, musical or artistic work), the general rule is that the author is the first owner of the copyright subsisting in the work.
- Who is this person whom the law refers to as the author of a work?
- Author is the **creator** of the work.

Exceptions

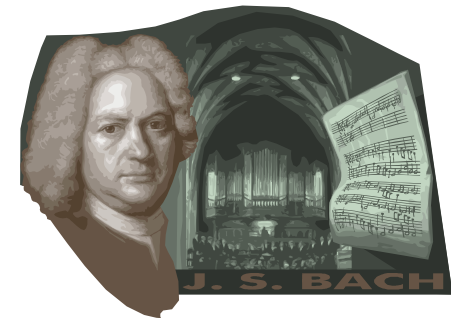
- a. work of a employee-journalist;**
- b. work of a commissioned artist and photographer;**
- c. work of an employee;**
- d. work executed under an agreement to the contrary.**

Who owns the copyright?

- In the case of entrepreneurial copyright or neighbouring rights, the copyright belongs to the entrepreneur i.e. the producer or the manufacturer of the subject matter.



Dickens



Joint authors

- **The joint authors hold the copyright in their work as tenants in common and not joint tenants.**
- **When one of the joint authors dies, his interest is passed to his beneficiaries in law rather than to his fellow joint authors.**
- **In the absence of contrary agreement, each of the joint authors holds equal undivided shares.**

The Protection of Foreign Copyright Materials

- **Bilateral treaties between countries to secure reciprocal recognition of copyrights.**
- **For example, Singapore is now signatory to the Berne Convention of 1886, last revised in Paris in 1971. Under the convention, member countries must accord similar rights and privileges to each other with regard to all works originating from member countries of the same convention. See the Copyright (International Protection) Regulations.**
- **The impact of TRIPs is also significant as in the agreement, there is Article 3 which states that national treatment must be accorded to signatory countries with regard to the rights and privileges stated in the agreement.**

How can copyright be exploited?

- **By licensing or by assignment.**

What are the exclusive rights conferred on a copyright owner?

- **In the case of a literary, dramatic or musical work, to do all or any of the following acts:**
 - (i) To reproduce the work in a material form;
 - (ii) To publish the work if the work is unpublished;
 - (iii) To perform the work in public;
 - (iv) To communicate the work to the public;
 - (v) To make an adaptation of the work;
- **To do, in relation to a work that is an adaptation of the first-mentioned work, any of the acts specified in relation to the first-mentioned work in sub-paragraphs (i) to (v)**

What are the exclusive rights conferred on a copyright owner?

- To “communicate” means to –
- “transmit by electronic means (whether over a path, or a combination of paths, provided by a material substance or by wireless means or otherwise) a work or other subject matter, whether or not it is sent in response to a request, and includes-
 - (a) **broadcasting** of a work or other subject matter;
 - (b) the **inclusion** of a work or other subject matter **in a cable programme**;
 - (c) the **making available** of a work or other subject matter (on a network or otherwise) in such a way that the work or subject matter may be accessed by any person from a place and at a time chosen by him.”

What are the exclusive rights conferred on a copyright owner?

- In the case of an artistic work, to do all or any of the following acts:
 - (i) to reproduce the work in a material form;
 - (ii) to publish the work;
 - (iii) to communicate the work to the public; and
- In the case of a computer program, to enter into a commercial rental arrangement in respect of the program unless the program is not the essential object of the rental.

What are the exclusive rights conferred on a copyright owner?

- **In the case of sound recordings; cinematography films; television broadcasts and sound broadcasts; cable programmes; and published editions of works, each category are conferred different exclusive rights.**

What are the exclusive rights conferred on a copyright owner?

- These rights discussed in the previous two slides are generally referred to as primary rights of the copyright owner.
- There are also secondary rights : rights to prohibit the importation, sale, offer for sale, letting for hire or any distribution for the purpose of trade in Singapore which was made in infringement of copyright in the country in which it was made.

Infringement

The meaning of copying or reproduction.

1. Counterfeiting copying

2. Substantial copying

- a question of fact
- a question of quality of the part taken
- originality of the part taken
- how essential is the part taken
- purpose of the taking

Infringement

- **Copyright is infringed if there is proof of copying:**
 - **the alleged “copied work” must be shown to have been derived from the original earlier work.**
 - **there must be objective similarity between the copyright work and the infringing work**
 - **there must be a causal connection between the two works**

Defences

- **Fair dealing defences**
 - **Fair dealing in relation to works**
 - **Fair dealing for purpose of criticism or review**
 - **Fair dealing for purpose of reporting current events**
 - **Reproduction for purposes of judicial proceedings or professional advice**

Fair dealing in relation to works

Whether the dealing is fair depends:

- **the purpose and character of the dealing;**
- **nature of the work or adaptation;**
- **how much has been taken;**
- **the effect of the dealing on the potential market for the work or the value of the work;**
- **the possibility of obtaining the work or adaptation within a reasonable time at an ordinary commercial price**

Remedies available to the copyright owner

- **Civil Proceedings**
 - injunction
 - damages
 - account for profits
 - delivery up
 - forfeiture
 - destruction or disposal of infringing copies of the copyright work
- The copyright owner may sue the person who **does** the infringing acts or any person who **authorises** the doing of the infringing acts.
- **Criminal Proceedings**

Thank you!