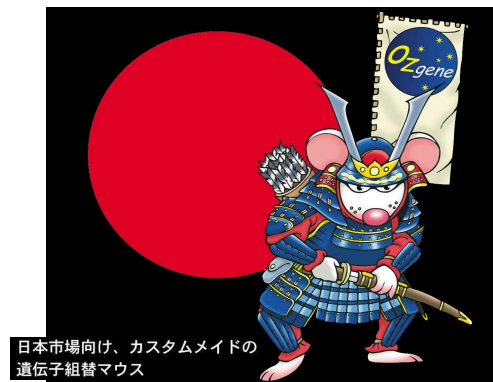


WELCOME TO ...

**“Creative Expressions”
Benefiting From Your Copyright and using the
Copyright of Using the Copyright Works
in Your Business**

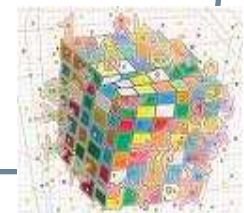


**WIPO TRAINING OF TRAINERS PROGRAM ON EFFECTIVE
INTELLECTUAL PROPERTY ASSET MANAGEMENT
BY SMALL AND MEDIUM-SIZED ENTERPRISES**

**Riyadh, Kingdom of Saudi Arabia
January 29 to February 2, 2011
Larysa A. Kushner**

Overview

1. What is copyright and what are the creative expressions of Your business?
2. Why is copyright relevant to Your business?
3. How Your business can protect its creative expression and it gives?
4. Ownership on creative expressions
5. Using the works owned by others

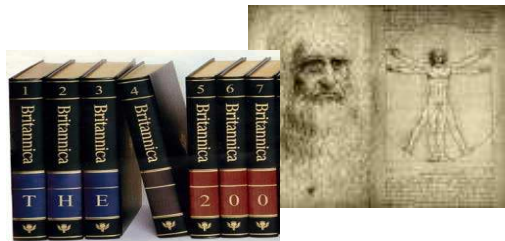


1. What is Copyright ?



Copyright

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



Literary works



Musical works



Artistic works,
architectural works



Photographic works



Maps, charts, diagrams,
technical drawing



Computer programs,
original databases



Dramatic works



Motion pictures

What are the creative expressions of your business?

Marketing materials:

- Trade and product catalogs
- Artwork and text on product literature, labels and packaging
- Marketing and advertising materials (on paper, billboards, websites, accounting forms)
- Content on websites
- Sales training program captured on videocassette and CDs
- Newsletters
- Copyright protects works that are expressed in **print** as well as those created or stored in **electronic or digital media**



What are the creative expressions of your business?

Machinery and Equipment:

- Software to operate and/or maintain machinery
- User, repair or maintenance technical manuals for various types of equipment and machinery
- Sketches, drawings and maps



What are the creative expressions of your business?

e.g. Textile and Fashion Sector:

- Artwork applied to clothing or to other useful articles
- Fabric design patterns
- Needlework and craft kits
- Patterns for sewing, knitting, crochet, needlework
- Weaving designs, lace designs, tapestries
- Sketches and patterns



Photos: WIPO/
S. Castongua

Appliqués : *Wal-Mart Stores, Inc. v. Samara Bros., Inc.*, 529 U.S. 205 (2000)



What are the creative expressions of your business?

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



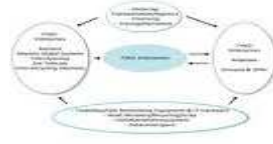
Scooby Doo Fabric by **Cranston Village**
Licensed by **Hanna-Barbera**

- **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



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

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'

2. Why is Copyright Relevant to Your Business?



Why Copyright is relevant for your Business?

Copyright Industries:

- 1. Core copyright industries** that create copyright materials as their main product:
book publishers and related industries, the music publishing industries, theater, film and television production companies, visual arts industries, computer software etc.
- 2. Partly copyright-based industries** in which part of their product is directly related to the creation or exploitation of copyrighted work: advertising agencies, computer consultants, architectural services, web-site design services etc.
- 3. Copyright-based distribution industries:**
businesses involved in paper production wholesaling, computer and software retailing, film and video distribution, etc.

Why Copyright is relevant for your Business?

Most Business:

- Print brochures or publish advertisements that create and/or use copyright materials
- Develop and maintain websites that create and/or use copyright materials
- **Use** copyright materials to **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



Why Copyright is relevant for your Business?

1. **Control of Commercial Exploitation:**
2. **Exclusivity** over the use of copyright protected works helps business to gain and maintain **competitive edge** in the marketplace
3. **Generate Income**

Copyright is a tradable asset that may be owned, bought and sold the same as other types of property

4. **Effective Marketing and Advertising**
5. **Raise Funds**
6. **Take actions against infringers**



3. How Your Business can protect its creative expressions?



- **Let's discuss it on a practical example...**
take a look at Exercise 1

How Your Business can protect its creative expressions?

- **How to Obtain Rights:** Copyright exists automatically upon creation
- **Remember:** To maximize rights, if possible, register copyright claim with the national authority
- **Advantages of Registration:** will be accepted as evidence of copyright ownership in the event that you wish to enforce your copyright against an infringer and greatly reduces the preparation of evidence
 - Deposit copy with bank / lawyer
 - Send yourself copy in sealed envelope



How Your Business can protect its creative expressions?

Criteria of protection:

- **Originality** of literary and artistic expression
 - should originate from the author: product of independent creation
- Fixation in a tangible form generally required
- Quality, importance, the mean of expression are not relevant



(Photo: ABC Wax (Cha Group))

Exclusive Rights:
the basis to legitimately seek and receive remuneration for the different way of use of Your original works

Economic Rights (Use)	Examples
<ul style="list-style-type: none"> – 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 – Rent*, lend* 	<ul style="list-style-type: none"> - Reproduction of a pattern in various forms, e.g. printed publications (catalogs, t-shirts, posters, etc.) - Sell the products or copies of the products to the public - Online catalogs - Exhibit the works in fairs, craft exhibitions, museums, etc. - Adaptation of a pattern for different products

Assignment or License

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



<http://www.donestore.com.au>

Moral Rights

Moral Rights (Europe, Saudi Arabia)

- Right of paternity (authorship):
acknowledgement
- Right of integrity: object against
mutilation and/or distortion that may
discredit the reputation of the author

Can Not be Transferred

Waivers?

Example:

- 2000 Alberto Korda (Diaz Gutierrez) sued Smirnoff's advertising agency, Lowe Lintas, and the picture library, Rex Features, for use of the picture for Smirnoff's advertising company in UK



How Your Business can protect its creative expressions?

- The property rights over a physical object (work) are completely **independent** from the IP rights of the creator.
- The **buyer** of a work acquires the **physical object**, but not the copyright, design rights, etc. over the work
 - pigments, canvas, frame, stretcher
- **Copyright** in the work remain with the **creator** unless he expressly assigns it by written agreement to the buyer



Dakota Collectibles
Embroidery Design Center
<http://www.dakotacollectibles.com>



Su Embroidery Studio
<http://www.suembroidery.com/>

How Your Business can protect its creative expressions?

Example:

Artist sells his painting...



by Ahmad Azzubaidi

- Buyer cannot reproduce it on fabric (**reproduction right**)
- Buyer cannot exhibit the painting in art gallery or other public place (**exclusive right to show the work in public**)

→ Need for explicit authorization from the copyright owner
- Buyer cannot alter the painting in a way that is prejudicial to the honor or reputation of the author (**moral right to object to derogatory treatment**)

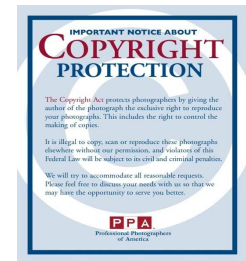
What does copyright protection means for your business?

- **Scope:** Protects against unauthorized use or copying
- **Test for Infringement:** Unauthorized use or copying
 - access to the copyrighted material
 - identity or substantial similarity with the copyrighted material
- Independent creation is often used as a defense

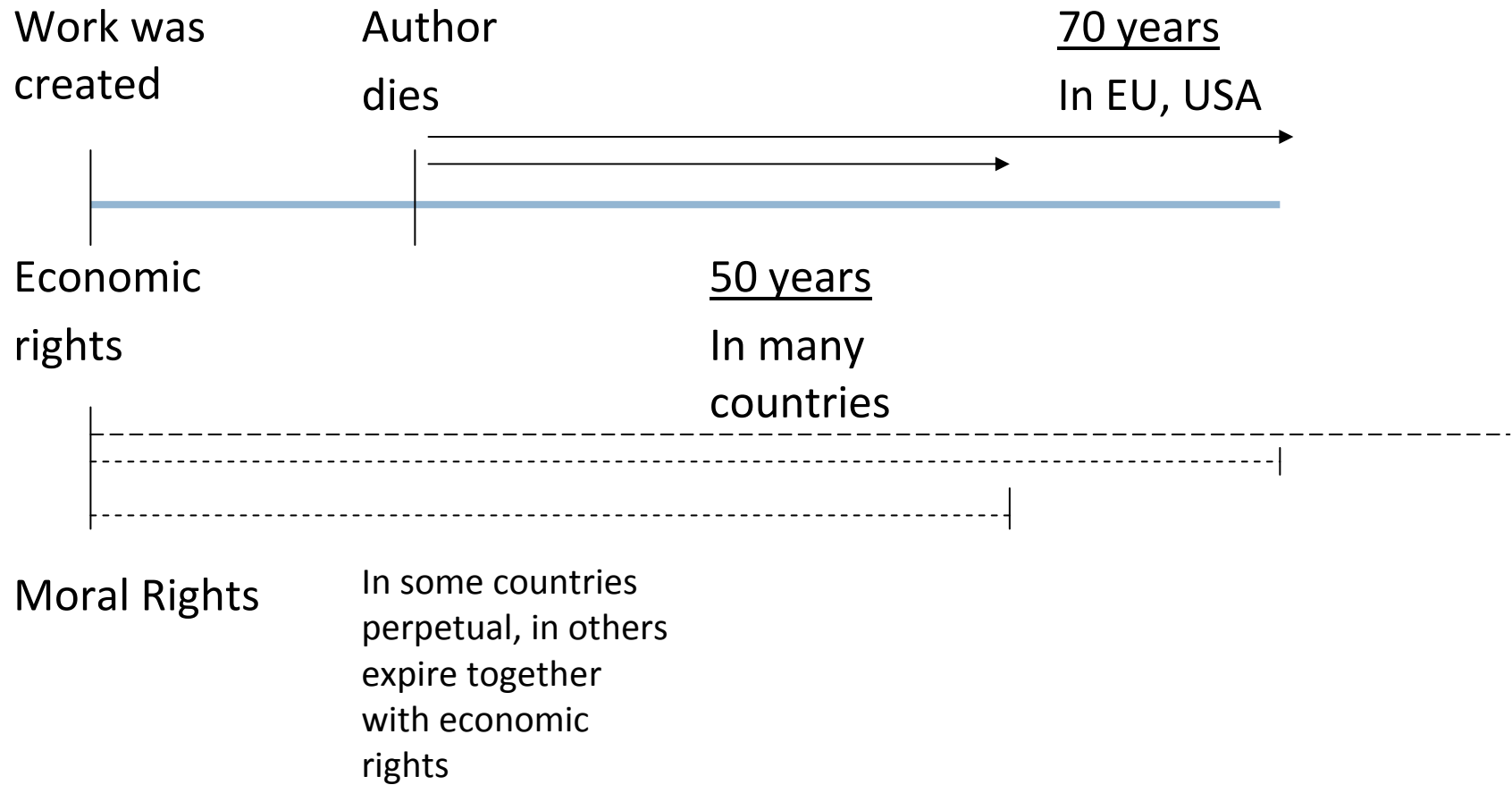


What does copyright protection means for your business?

- Copyright notice
 - © or “Copyright” with year of first publication and name of owner
- Copyright subsists **worldwide**:
Berne Convention (Saudi Arabia is a member)
- But **national** law applies – **territorial** right



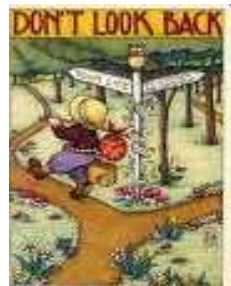
How long creative expressions are protected?



Case Study: Mary Engelbreit

From WIPO SMEs Division Case Studies Collection

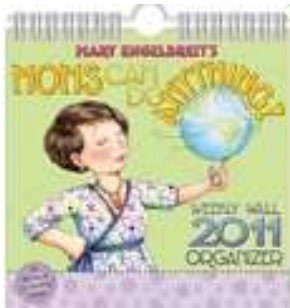
- Mary Engelbreit is known throughout the world for her colorful and intricate designs, and has become a pioneer for art licensing
- Beginning: "drawing to order" for free-lance clients
- Went to New York → illustrating greeting cards
- Several well-known card companies bought her designs, and sales were brisk into a million-dollar-a-year business.
- Decision to [license her cards](#) to Sunrise Publications to free up more time for her art and to grow her business in other areas



Case Study: Mary Engelbreit

- Other companies were anxious to **merchandise** Mary's distinctive artwork on a wide range of products including calendars, T-shirts, mugs, gift books, rubber stamps, ceramic figurines and more

www.maryengelbreit.com



Case Study: Mary Engelbreit



“A Day At The Beach” new collection of fabric designs

- Mary Engelbreit Studios now has **contracts with dozens of manufacturers** who have produced more than 6,500 products in all.
- Mary takes extreme care in choosing **only the best** companies to work with and goes to great lengths to make certain that her artwork is reproduced as **faithfully** to her original work as possible

4. Ownership on creative expressions



Ownership on creative expressions

0. Author ≠ Right holder (ownership)

1. Ascertain Ownership

- **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



Ownership on creative expressions

**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

Ownership on creative expressions

Work created by **your employee**

- Owner = employee
- Owner = employer, automatic transfer
- Owner = employer, assignment needed

Solution: Assign of ownership or clearly define the scope of future use of
work in a written contract



- **Let's discuss it on a practical example...**
take a look at Exercise 2

Ownership on creative expressions

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

- 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
1. The creator (the author) of the work is the first owner and till other is not stated in written in the contract your company would be able to use work only for purposes for which the work was created
 2. In order to use the work differently or change/update it your company would need to get additional permission/pay additionally to the creator

Solution: Assign of ownership or clearly define the scope of future use of work in a written contract

- **Let's discuss it on a practical example...**
take a look at Exercise 3

5. Using Works Owned by Others



Using Works Owned by Others

May enhance the value or efficiency of your business

Examples:

- Use of design/pattern developed by other
- Use computer software or databases created by other
- Illustrate your website or catalogs with photographs taken by others

Requires, in most cases, **prior permission** from the copyright owner



Case Study

From the IPEuropAware Guide for the Textile and Clothing Industry

- Small Enterprise X introduced children's T-shirts decorated with cartoon characters onto the market. The enterprise did not find any trace of the characters in the trade mark and design databases and so presumed that they were not protected and that their use was legal
- The cartoon characters were protected under copyright. As copyright is a self-executing right, it was not registered in any database. It was a surprise, therefore, when they received a declaration from Company Z, a cartoon film producer, that stated that X was infringing its copyrights
- Small Enterprise X reached an out-of-court settlement with Company Z
- Enterprise X could continue selling the product after payment of compensation and royalties from further sales. The compensation resulted in the loss of a few years' profit for small Enterprise X.

Using Works Owned by Others

Possible involvement into the copyright violation

- By selling or otherwise commercially dealing with an item that violates someone's copyright
- 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

Using Copyright Works of Others: Getting an Permission

1 Step - Clarification if a work is protected

Checking copyright notices, if any

Searching in the register

Contacting Collective Management Organizations CMO(s)

Contacting agencies/agents



2 Step - Identification of copyright owner

Contacting publishers, record producers, etc.



3 Step - Negotiating and concluding licensing agreement

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

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