

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

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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- Copyright can exist in published and unpublished works.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

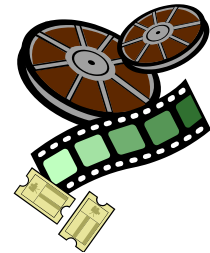
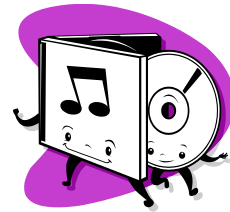
- **Authors' works:**
 - original literary work;
 - original dramatic work;
 - original musical work; and
 - original artistic work



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

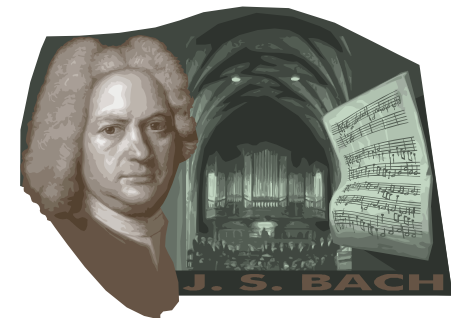
- a. work of a employee-journalist;**
- b. work of a commissioned artist and photographer;**
- c. work of an employee;**
- d. work executed under an agreement to the contrary.**

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

- Infringement of copyright means the doing of any of the exclusive rights conferred on a copyright owner without his consent.
- Copyright owners of different works and subject matters other than works are conferred different exclusive rights.
- Refer to slides on exclusive rights.

Infringement

- Under the Copyright Act, there are three types of copyright infringement:
- (a) *doing* of any of the restricted acts comprised in the exclusive rights;
- (b) *authorising* the doing of the restricted acts comprised in the exclusive rights; and
- (c) *distributing or dealing* with infringing articles once they have been made.

Infringement - The right of reproduction

- There is one exclusive right which is common to all works and subject matters other than works – the right of reproduction
- 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 - The right of reproduction

- 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

Infringement – Other exclusive rights

- The meaning of “to publish the work if the work is unpublished”;
- The meaning of “to perform the work in public”;
- The meaning of “to communicate the work to the public”;
- The meaning of “to make an adaptation of the work”.

Infringement – The right to publish

- Insofar as a literary, dramatic, musical or artistic work, or an edition of such work is concerned, *publication* of the work means if, but only if, *reproductions* of the work or an edition of that work have been *supplied (by sale or otherwise) to the public*.
- By the same token, a sound recording is taken to have been published if, but only if, records embodying the recording or a part of the recording have been supplied (whether by sale or otherwise) to the public.

Infringement – The right to perform the work in public

- The right to perform the work in public is a right conferred on the copyright owner of a literary, dramatic or musical work.
- Copyright owners of an artistic work do not enjoy the exclusive right of public performance.
- Section 22(1) of the Copyright Act provides that “performance” refers to:
 - (a) any mode of visual or aural presentation, whether the presentation is by the use of any receiving apparatus, by the exhibition of a cinematograph film, by the use of a record or by any other means; and
 - (b) any delivery of a lecture, an address, a speech or a sermon.

Infringement – The right to perform the work in public

- As far as other subject matter such as cinematograph films, broadcasts and cable programmes is concerned, copyright owners are conferred a specific right of causing the subject matter, insofar as it consists of visual images, to be seen in the public and insofar as it consists of sounds to be heard in public.
 - Therefore, under the Copyright Act, any unauthorised screening of a cinematograph film or broadcast of a television, radio or cable programme would constitute infringement in the right of public performance in these other subject matter.
- As for sound recordings, the law does not confer on copyright owners the exclusive right of public performance.
 - The right to perform in public is applicable only to musical and literary works embodied in a sound recording.
 - However, copyright owners of a sound recording are conferred a right “to make available to the public a sound recording by means of, or as part of, a digital audio transmission”, which in essence is a form of communication right.
 - Therefore, the playing of a sound recording on a tape recorder in a public park to a group of elderly folk as music accompaniment to their usual morning exercises, may infringe the right of public performance in the literary and musical works embodied in the sound recording.
 - However, there is no copyright infringement in the sound recording since it was not made available by means of, or as part of, a digital audio transmission.
 - The sound recording in this hypothetical is transmitted in an analogue form.
 - “Digital audio transmission” means “a transmission of a sound recording, in whole or in part, in a digital or other non-analogue form”. See s 7(1) Copyright Act (Cap 63, 2006 Rev Ed).
- Published editions of works do not enjoy a separate right of public performance and the right to perform in the public is only applicable to the literary, dramatic or musical work embodied in the edition of the work.

Infringement – The right to perform the work in public

- What does “performing in public” mean?
- The Copyright Act does not define what “in public” actually means.
- The English Court of Appeal in *Jennings v Stephens* held that the true criterion of whether a performance is “in public” or not is the *character of the audience* and, in turn, there are four important factors which are relevant when determining the true character of the audience:
 - (a) the presence or absence of visitors or guests;
 - (b) whether the performance is paid or gratuitous;
 - (c) whether admission is free or for payment; and
 - (d) the number of the audience involved.

Infringement – The right to communicate the work to the public

- Section 7(1) of the Act provides a broad definition of the word “communicate”, which 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.”

Infringement – The right to make an adaptation

- Section 7(1) of the Copyright Act defines “adaptation” as follows:
 - (a) in relation to a literary work in a non-dramatic form, means a version of the work (whether in its original language or in a different language) in a dramatic form;
 - (b) in relation to a literary work in a dramatic form, means a version of the work (whether in its original language or in a different language) in a non-dramatic form;
 - (c) in relation to a literary work being a computer program, means a version of the work (whether or not in the language, code or notation in which the work was originally expressed) not being a reproduction of the work;
 - (d) in relation to a literary work (whether in a non-dramatic form or dramatic form), means:
 - (i) a translation of the work; or
 - (ii) a version of the work in which a story or action is conveyed solely or principally by means of pictures; and
 - (e) in relation to a musical work, means an arrangement or transcription of the work.

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!