

Shearn Delamore & co.

What do you need to know about Copyright?

by Karen Abraham

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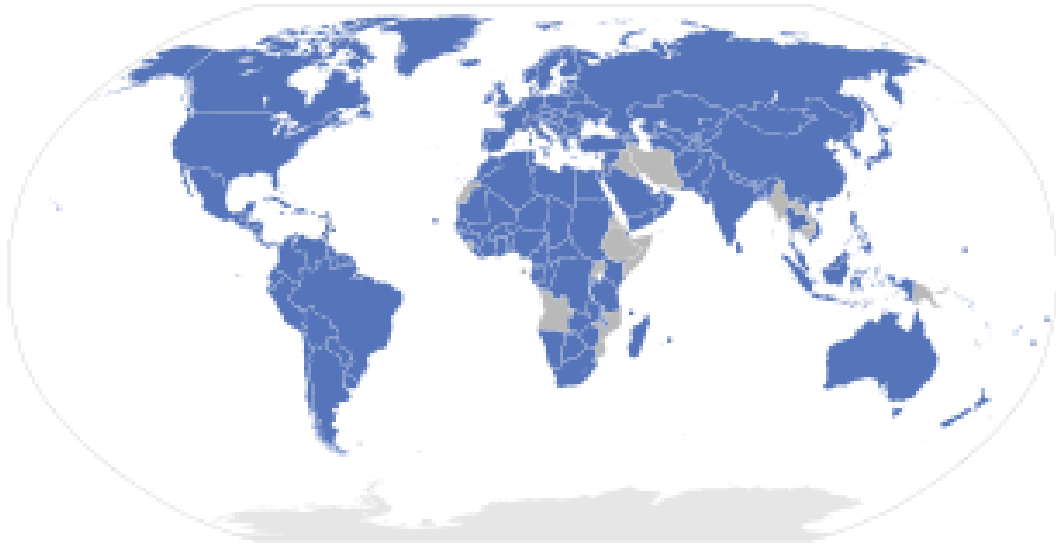
1) Introduction to copyright

**2) Challenges and the future of TK / TCE
protection**

Introduction to copyright

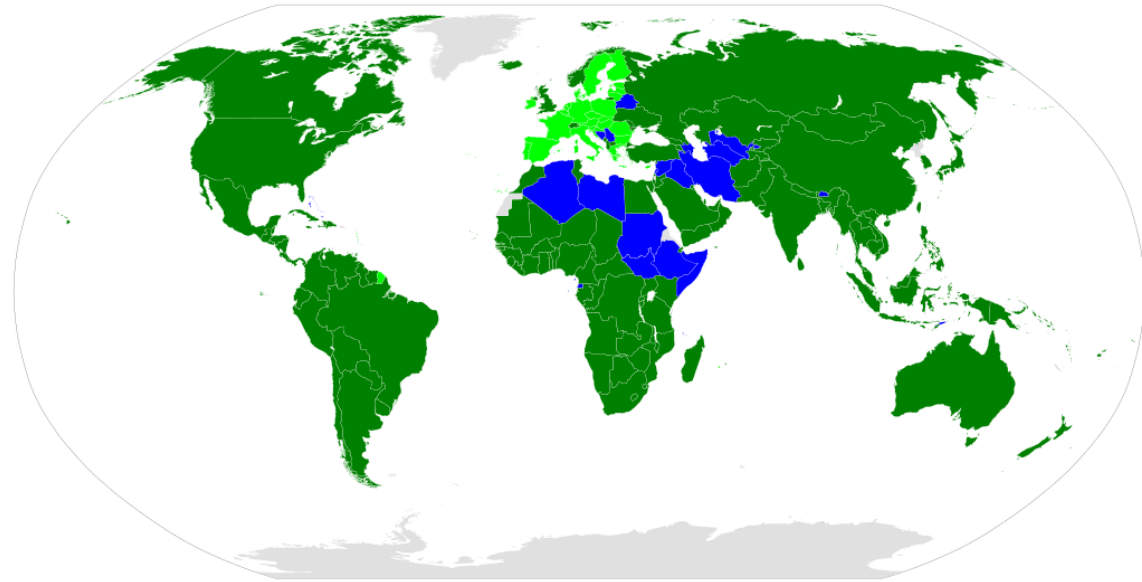
Copyrights – a universal form of protection

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Signatories to the Berne Convention

© Muso



Signatories to the TRIPS Agreement

What is copyright? ©

Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works.

What are traditional cultural expressions?

Any form of artistic and literary expression in which traditional culture and knowledge are embodied. They are transmitted from one generation to the next, and include handmade textiles, paintings, stories, legends, ceremonies, music, songs, rhythms and dance.



What can be protected?

- Expressions, not ideas
- Original works
- Reduced to material form
 - Varies between jurisdictions
- Duration
 - Generally 50 or 70 years after author's death



What can be protected?

© Whang-Od



© Alice Huang



© National Library of Malaysia



© Stephan Debelle



© Johantheghost



How to protect copyright?

- In general, copyright subsists automatically – no need to register
- But some jurisdictions have formal systems in place:
 - Copyright registration / recordation:
 - Voluntary procedure which serves as proof of copyright ownership
 - But this system may be more important in some jurisdictions, e.g. in the US copyright must be registered before formal court proceedings may be initiated
 - Statutory Declaration:
 - Notarised statement declaring ownership over copyright
- Assert your copyright
 - © Name of author 2022

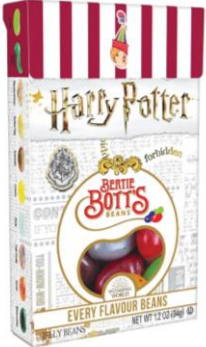


Economic rights

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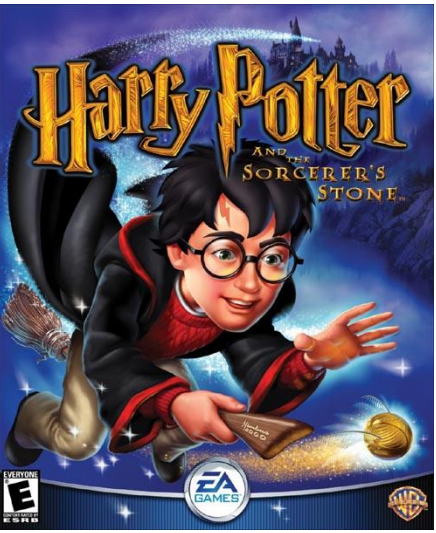
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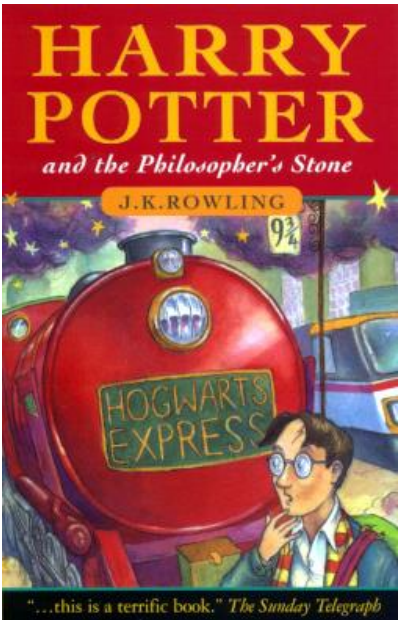
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What rights do I acquire?

- Moral rights



© Amarnath Sehgal



© Anand and Anand



What if someone steals my copyright?

Enforcement options

- Pre-emptive cease and desist letter
- Negotiations
- Mediation
- Copyright Tribunal
- Court proceedings
 - Civil
 - Criminal

Remedies

- Apology
- Acknowledgements
- Would-be license fees / royalties
- Assignment of the copyright registration
- Injunction
- Damages



Why copyright?

- Covers all categories of goods and services
- Universally recognized
- Automatic – no formal registration required
 - Prevent exploitation
 - Commercialise your works
 - Exploit your works
- Ensure the copyrighted work is respected!



Challenges and the future of TK / TCE protection

Copyright challenges

- “Material form”
 - Oral traditions, recipes, traditional knowledge
 - Even if recorded now for the sake of asserting copyright – originality?
 - Ideas not protected



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Copyright challenges

- **Ownership**
 - In general, copyright law requires a legal entity to be named the “owner” of a copyright
- **Authorship and duration of copyright**
 - Who is the author?
 - Copyright protection only lasts for a certain duration after death of the author
- **Originality**
 - Even if copyright is asserted, a prior work may be adduced to challenge the copyright



Copyright challenges

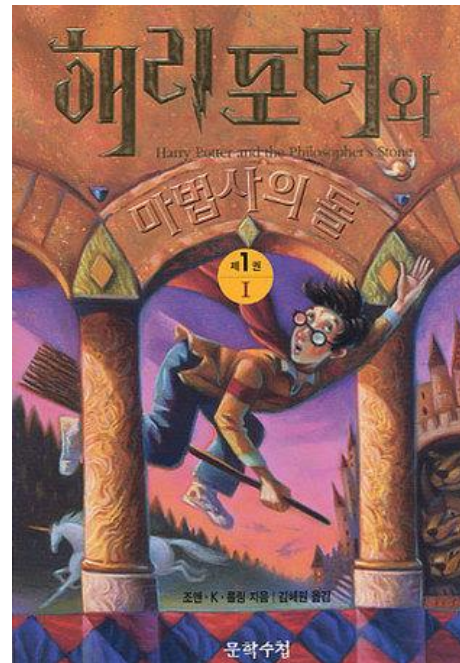


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- Traditional knowledge
 - Copyright may not cover traditional skills and techniques

- Derivative works

- Translations
- Adaptations
- Arrangements of music
- Compilations



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How to make copyright work for you?

- **Representative**
 - Appoint or set up an entity to speak for the community
- **Database**
 - Record all traditional works and expressions in a database
- **Defence**
 - Challenge the copyright of others
- **Protection**
 - Under the representative's name as owner



Lessons from other jurisdictions

- **Amend existing IP law to include TK / TCE**
 - Mexico: use of TK / TCE must be authorized by the indigenous community in writing
- **Tailor-made laws**
 - Panama: special system for the protection of IP Collective Rights of Indigenous People
 - Every form of TK / TCE recognized, and can be registered in a special system
 - Commercial use must be supported by license agreement – with royalties
- **Involving indigenous communities**
 - New Zealand: Māori Trade Marks Advisory Committee



Conclusion

- Copyright is a powerful tool, for now
- *Sui generis* system may be ideal
 - WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)
 - The Protection of Traditional Cultural Expressions: Draft Articles
 - **Acknowledges** The UN Declaration on the Rights of Indigenous Peoples
 - **Recognizes** Indigenous people as Beneficiaries
 - **Sets out** Criteria for eligibility / Scope of protection
 - **Identifies** Term of protection
 - **Emphasizes** Sanctions, remedies and exercise of rights/ application



Thank you!



- Karen Abraham
- +6012-202 2646
- karen@shearndelamore.com

