

Copyright Protection Online

Kelvin Sum
Senior Assistant Director/Legal Counsel
Intellectual Property Office of Singapore

NTU, 23 May 2008

- ◆ Basics of Copyright
 - ⇒ How does Copyright come about
 - ⇒ What is protected under Copyright
 - ⇒ Specific Exclusive rights
 - ⇒ Copyright Online
- ◆ New provisions for digital age
- ◆ Infringement
 - ⇒ Civil remedies, Criminal Offences
- ◆ Exceptions
- ◆ Recent criminal cases
- ◆ Useful resources

Copyright law in Singapore

- ◆ The Copyright Act (1987)
 - amended in 1998, 1999, 2004 and 2005 to meet obligations under international treaties and USSFTA

- ◆ Treaties & Agreements
 - ⇒ Berne Convention
 - ⇒ WTO TRIPS Agreement
 - ⇒ WIPO Copyright Treaty
 - ⇒ WIPO Performances and Phonograms Treaty
 - ⇒ US-Singapore Free Trade Agreement

What is Copyright?

- ◆ Bundle of **Exclusive Rights** designed to enable copyright owner to:
 - ⇒ **Exploit** the rights
 - ⇒ **Authorise** others to exercise the rights
 - ⇒ **Restrict** others from exercising the rights

How does Copyright Protection come about?

- ◆ Protection is **automatic**
- ◆ Based on **originality**, not novelty or merit
- ◆ Protects **expression**, not ideas

What is Protected under Copyright?

◆ *Original works*

- ⇒ Literary works (novels, poems, writings, computer programs, “creative” compilations/databases, multimedia works)
- ⇒ Dramatic works (film scripts, choreography in writing)
- ⇒ Musical works (music scores)
- ⇒ Artistic works (painting, sculptures, photographs, buildings)

◆ *Other works (**N**eighbouring works)*

- ⇒ Sound Recordings (CDs, MP3 files)
- ⇒ Films (Movies)
- ⇒ Broadcasts (TV, Radio)
- ⇒ Cable Programmes (SCV channel)
- ⇒ Published Editions (typographical arrangement i.e. the format of a newspaper or book)

Copyright = Specific Exclusive Rights

- ◆ Exclusive rights to do, authorize or restrict the following:
 - ⇒ Copy
 - ⇒ Perform in public
 - ⇒ Publish
 - ⇒ Communicate to the public
 - ⇒ Adapt (including translation)

Works made available on the internet are protected

- Copyright material may be communicated to the public over the Internet.
- Allows copyright owners to exploit their works on digital networks or through on-demand electronic platforms
- Also covers traditional broadcast and cable cast rights

Copyright Online

- ◆ Increasingly User & Content driven
 - ⇒ Web 2.0
 - ⇒ User content – made by users, not professionals.
 - Music, films, images, computer programs, games
 - ⇒ e.g. File Sharing, Blogs, Social networking sites (Facebook)

- ◆ Digital environment
 - ⇒ Easy to copy
 - ⇒ Easy to distribute

- ◆ Copyright-based industry
 - ⇒ Increasing importance to Singapore economy
 - ⇒ S\$30.3 billion output in 2003 (18.1% of GDP)
 - ⇒ S\$10.2 billion value added (6.2% of GDP)
 - ⇒ 6.2% of national employment

Copyright Online

- ◆ File-sharing – e.g. Napster, Bittorrent
 - ⇒ copying of files from another computer
 - ⇒ Q: Did you download them from an authorised website (e.g. Soundbuzz or iTunes)? Did you pay for them?
 - ⇒ Q: Did you download the songs/videos from another user? Are you sure that those are legal copies?
 - ⇒ Q: Did you upload songs onto the Internet? Did you get permission from the owner of the song?

- ◆ Blogging – e.g. Blogspot
 - ⇒ providing a diary/journal online
 - ⇒ Q: Did you copy passages or images from someone else's blog? Did you get permission from the owner to copy?

- ◆ Social networking sites – e.g. Facebook, Friendster
 - ⇒ Q: Did you embed images/songs/videos onto your site?
 - ⇒ Q: Did you ask for permission to embed these works?

Infringement

- ◆ Infringement when you do something that is not authorised by the Copyright owner
 - ⇒ E.g. if the author did not authorise you or give you permission to make a copy, but you still copied the file onto your computer.
 - ⇒ Q: sale = permission or authorisation?
 - ⇒ A: Not always. Look at the terms and conditions of the sale.

- ◆ Copyright is also infringed through commercial exploitation
 - ⇒ E.g. sale, hire or distribution of infringing copies; importing infringing copies for these purposes

◆ Civil Remedies

⇒ Remedies

- Injunction
- Damages (includes profits attributable to act)
- Statutory damages (maximum aggregate S\$200,000/-)
- Order for delivery up or destruction

◆ Criminal offences

- ⇒ Makes, sells, lets for hire, exposes, exhibits in public, possesses or imports for sale, hire, distribution for trade infringing copies, knowing that the copies are infringing copies

◆ Penalties

- ⇒ \$10,000/- fine for each infringing copy up to max \$100,000/-; and / or
- ⇒ Max prison term of 5 years

◆ Criminal offences

- ⇒ distribute for trade or other purposes to such an extent as to affect prejudicially the owner of the copyright infringing copies, knowing that the copies are infringing copies

◆ Penalties

- ⇒ Max \$50,000/- fine and/or
- ⇒ Max prison term of 3 years

◆ Willful infringement

- ⇒ Criminal Liability: if acts below done WILFULLY and for purpose of commercial advantage or private financial gain
 - Does an infringing act other than those previously mentioned WILFULLY and
 - the extent of the infringement is significant and/or
 - for the purpose of commercial advantage
- ⇒ Penalties
 - Max \$20,000 /- fine and / or max prison term of 6 months
 - Subsequent Offence – Max \$50,000/- fine and / or max prison term of 3 years

Examples:

- ◆ For the purpose of obtaining commercial advantage
 - ⇒ E.g. Copying original materials from the Internet by advertising company for use in its work for paying clients.
 - ⇒ E.g. Infringement by a business through the purchase of only one licence for use in multiple computers in carrying out business (under-licensing).

- ◆ The extent of the infringement is significant
 - ⇒ E.g. Uploading of infringing copies of film for access by all users of the Internet before release in cinema.

Technological Access Control Measures

Protection against Circumvention of technological Measures

- E.g. DVDs (DeCSS), hacking the iPhone or PSP.
- Purpose is to provide adequate legal protection and remedy against the circumvention of effective technological measures that authors, performers and producers of sound recordings use to protect their copyright

Criminal Liability

- Circumvent technological access control measure
 - Offence carries a max fine of \$20,000/-
- Manufacture, import, distribute, offer to public, traffic in circumvention device OR offer circumvention services
 - Each offence carries a max fine of \$20,000/- and/or max prison term of 2 years

Exceptions

- ◆ Copyright is not a complete monopoly right
- ◆ Copyright is an incentive to promote and facilitate the creation and dissemination of creative works
- ◆ **Balance** is needed to ensure flow of information and knowledge to promote further creation. Thus, there are **exceptions**.
- ◆ Exceptions = not an infringement

Some Fair Dealing Exceptions

- ◆ Fair Dealing for purposes other than for criticism/review/reporting current events (Section 35(2))

Broad exception, taking into account:

- ⇒ Purpose and character of dealing (non-profit etc.)
- ⇒ Nature of work
- ⇒ Amount and substantiality taken
- ⇒ Effect on the right holders potential market
- ⇒ Ability to obtain the work within a reasonable time at ordinary commercial price

Presumption of Fair Dealing

- ◆ Research or Study (Section 35(3))
Presumed non-infringing if
 - ⇒ What is taken is less than 10% of pages in a published edition of the work **OR**
 - ⇒ Where the work is divided into chapters, portion taken is up to one chapter of an edition **OR**
 - ⇒ Portion taken is not more than one whole article in a periodical publication
 - ⇒ Other criteria for work in electronic form not divided into pages (then up to one chapter / 10% bytes / 10% number of words)

Some Fair Dealing Exceptions

- ◆ Criticism and Review (Section 36)
- ◆ Reporting Current events (Section 37)
- ◆ Judicial proceedings or legal professional advice (Section 38)

Recent Criminal Cases

- ◆ Use of P2P networks for UNAUTHORISED distribution of music, films and other copyright materials
 - ⇒ February 2006 - two youths aged 21 and 22 convicted of distributing copyright songs online.
 - Guilty of uploading about 2,000 between them for others to download.
 - Sentenced to 3 months and 4 months imprisonment respectively

◆ PP V PDM International Ptd Ltd [2006] SGDC 91

- ⇒ Under-licensing of computer programs by interior design company
- ⇒ Installed 20 copies each of computer programs from Adobe, Microsoft and 11 copies from Autodesk without proper licences
- ⇒ Fined a total of S\$30,000/-

Recent Criminal Cases

◆ Online sale of pirated software

- ⇒ 2004: undergraduate sold high-end counterfeit computer programs over the Internet
- ⇒ 2005: undergraduate charged with distribution of infringing copies
- ⇒ sentenced to 4 months jail

Recent Criminal Cases

- ◆ Sale of pirated copies of films
 - ⇒ 21 June 2007: Seller of infringing copies of film on DVD sentenced to 2 years imprisonment.
 - ⇒ 47 charges for selling infringing copies from make-shift stall.
 - ⇒ 2000 pirated DVDs found on arrest

Useful resources

Public Outreach



◆ Public Awareness

- ⇒ HIP Alliance (Honour Intellectual Property)
- ⇒ A public education campaign which aims to encourage the general public to **RESPECT IP** and **say NO! to Piracy**
- ⇒ www.hipfriends.org.sg



◆ Public Education

- ⇒ To teach students about IP in fun and interactive ways
- ⇒ E-learning modules, school assembly talks, national IP camps and competitions
- ⇒ www.iperckidz.gov.sg

Enterprise Development

- ◆ Development of IP Management (IPM) capabilities in public and private sectors at organisational level

- ◆ Programmes
 - ⇒ IPM for SMEs
 - ⇒ IPM for Public Agencies

- ◆ Methodology
 - ⇒ SCOPE IP
 - ⇒ <http://www.scopeip.sg>



- ⇒ IPOS website (General Information, FAQs) :
www.ipos.gov.sg
- ⇒ E-learning resource for students :
www.ipercckidz.gov.sg
- ⇒ IP Infosheets & Infopacks
- ⇒ Singapore statutes : <http://statutes.agc.gov.sg>

Intellectual Property Office of Singapore (IPOS)

51 Bras Basah Road #04-01

Plaza By The Park

Singapore 189554

Tel: (65) 6339 8616

Email: ipos_enquiry@ipos.gov.sg

Fax: (65) 6339 0252 - for general and trade mark
correspondence

(65) 6339 9230 - for patent correspondence

(65) 6339 1369 - for registered design
correspondence

Thank You!
谢谢