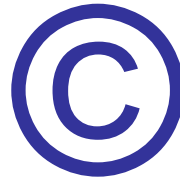


Introduction to COPYRIGHT



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Overview

- A. What is Copyright?
- B. How does Copyright Protection come about?
- C. What is Protected Under Copyright?
- D. How long is the Protection?
- E. Copyright Ownership
- F. Specific Exclusive Rights
- G. Obtaining Copyright Protection
- H. Infringement of Copyright
- I. Civil & Criminal Liability
- J. Exceptions
- K. Obtaining Permission
- L. Anti-Circumvention Measures

A. What is Copyright?

- A **Bundle of Exclusive Rights** designed to enable the copyright owner to:
 - ✓ **Use** his/her work
 - ✓ **Authorise** others to use his/her work
 - ✓ **Restrict** others from using his/her work

B. How does Copyright Protection come about?

- Protection is **automatic**
- Based on **originality**, not novelty or uniqueness
- Protects **expressions** not ideas

B. How does Copyright Protection come about?

- **Expression**
- Copyright will only be given to the **expression** of an idea.
- Ideas and facts (e.g. ideas for a play, scientific formulas, theories, inventions) are **not** protected by copyright.
- Expression required to be fixed or reduced into some **material form**, i.e. written or recorded on a tangible medium.

C. What is Protected Under Copyright?

Two main types:

1. Original works

- Literary works
e.g. novels, poems, writings, computer programs, lyrics, any textual expression
- Dramatic Works
e.g. screenplay, choreography in writing
- Musical works
e.g. music scores
- Artistic works
e.g. paintings, sculptures, photographs, buildings

C. What is Protected Under Copyright?

Two main types:

2. Other Subject Matter

- Sound Recordings
e.g. CDs, digital music files
- Films
e.g. Motion Pictures and soundtracks
- Broadcasts
e.g. TV, Radio
- Cable Programmes
e.g. StarHub Cable TV

C. What is Protected Under Copyright?

Two main types:

2. Other Subject Matter

➤ Composite Works

e.g. web page, multimedia CDs

➤ Published Editions (Typographical Arrangements)

e.g. the format of a newspaper or book

➤ Performances

e.g. Live Concerts

D. How Long is the Protection?

Published Literary, Musical, Dramatic, Artistic Works

- 70 years from end of year which Author died; or
- 70 years from end of year when work was first published, whichever is later

Special case: For photographs, duration of copyright is 70 years from end of year when the photograph was first published only

D. How Long is the Protection?

Sound Recordings, Films

- 70 Years from release to public

Broadcasts, Cable Programs

- 50 Years from release to public

Published Editions

- 25 Years after publication

Performances

- 70 years from performance

E. Copyright Ownership

- Generally, **AUTHOR** of work is first owner
- **EMPLOYER** will be first owner if work is done by employee in the course of employment unless otherwise agreed
- **COMMISSIONER** of a *photograph, painting or drawing of a portrait* is the owner (but photographer, painter, artist may object to use) unless otherwise agreed
- Subsequent ownership may be altered by assignments of rights between parties through contracts.

F. Specific Exclusive Rights

- **Exclusive** rights to do, authorise or restrict the following acts:
 - Copy
 - Perform in public
 - Publish
 - Communicate the work to the public
 - Adapt the work (including translation)

F. Specific Exclusive Rights

Right of Communication

- Traditional Broadcast and Cable Cast included
- Copyright Owners can control how their works are communicated over the internet
- Enables copyright owners to benefit from exploitation of their works on digital networks

G. Obtaining Copyright Protection

Protection is automatic

- Fixed in a tangible medium of expression
- No formalities for creation

Originality - Question of fact

- Evidence
- Assertion of copyright
- © IPOS 2008 or
- **Copyright IPOS 2008. All rights reserved.*

H. Infringement of Copyright

- **What is Primary Infringement**

- When you do something that only the copyright owner is entitled to do

i.e. Copy, Publish, Perform, Adapt, Communicate, Purport to authorise others to do any of the above

- Questions of fact:
 1. Is there copying?
 2. If there is copying, is it substantial?

Substantiality – qualitative & quantitative assessment

H. Infringement of Copyright

- **What is Secondary Infringement**
 - Copyright is also infringed through **commercial exploitation**
i.e. sale, hire or distribution of infringing copies; importing infringing copies for these purposes

I. Civil & Criminal Liability

- **Civil Enforcement**
 - Copyright owner can commence legal action for an infringement
- **The Courts may grant**
 - Injunction
 - Damages
 - Actual or Statutory
 - Account of profits
- **Other Remedies**
 - Order for delivery up of infringing copies
 - Order for disposal of infringing copies

I. Civil & Criminal Liability

• Criminal Offence

- Makes for sale or hire; sells or lets for hire
 - Possesses or imports for sale, hire, distribution for trade
 - distributes 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: fine and/or jail**

I. Civil & Criminal Liability

- **Criminal Offence**
- A person who infringes copyright may also be committing an offence
 - Infringes copyright 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

I. Civil & Criminal Liability

- Courts will determine whether “the extent of the infringement is significant”, taking into account the following factors:
 - Volume of the infringing articles;
 - Value of infringing articles;
 - Whether infringement has substantial prejudicial impact on copyright owner;
 - Other relevant matters
- Meaning of “commercial advantage”:
 - Direct advantage, benefit or economic gain for a business or trade carried on by the infringer

I. Civil & Criminal Liability

- **Examples:**
- **(for the purpose of obtaining a commercial advantage)**
 - Copying original materials from the Internet by advertising company for use in its work for paying clients.
 - Infringement by a business through the purchase of only one licence for use in multiple computers in carrying out business (under-licensing).
- **(where the extent of infringement is significant)**
 - Uploading of infringing copies of film before theatrical release for access by all users of the Internet.

J. Exceptions

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

J. Exceptions

- **Some General Fair Dealing Exceptions:**
- **For Original Works**
 - Research and study (Section 35(1A))
 - Criticism and Review (Section 36)
 - Reporting Current events (Section 37)
 - Judicial proceedings or legal professional advice (Section 38)
- **For Audio-visual Items**
 - Research and Study (Section 109(2))
 - Criticism and Review (Section 110)
 - Reporting Current events (Section 111)

J. Exceptions

- **Research or Study (Section 35)**
- Presumed non-infringing if **reasonable** portion of the **published** literary, dramatic or musical work is taken,

- $\leq 10\%$ of the no. of pages in a published edition of the work, not less than 10 pages; **OR**
- where the work is divided into chapters, up to 1 chapter of the edition; **OR**
- not more than one whole article in a periodical publication; **OR**
- for work in electronic form not divided into pages, up to 1 chapter / 10% bytes / 10% no. of words

Whichever is greater

J. Exceptions

- **Broad Fair Dealing Exception: Other Dealings**
- The Courts will determine if dealing was fair, based on the fact situation, using the following factors:
 - Purpose and character of dealing (i.e. non-profit etc.)
 - Nature of work (i.e. is it possible to take a portion only?)
 - Amount taken (substantiality)
 - Effect on the right holders' potential market
 - Ability to obtain within a reasonable time at ordinary commercial price

J. Exceptions

- Special Exception for “**Educational Institutions**”
 - Performance of a musical work by students or staff of an educational institution does not constitute public performance **provided:**
 - Performance is done in the course of the activities of the institution
 - Performance of a literary work, dramatic work, cinematograph film, broadcasts, cable programmes or recordings of performances by students or staff of an educational institution does not constitute public performance **provided:**
 - Audience is limited to staff, students, parent, guardian, sibling of student who receives instruction at that place
 - Performance is done in the course of the activities of the institution

K. Obtaining Permission

- Direct Licensing Arrangement
- Licensing Bodies
 - For Books : Copyright Licensing and Administration Society of Singapore (CLASS)
 - For Music : Composers and Authors Society of Singapore Limited (COMPASS) & Music Publishers (Singapore) Ltd (MPS)
 - For Sound Recordings, Karaoke & Music Videos: Recording Industry Performance Singapore Pte Ltd (RIPS); InnoForm Entertainment Pte Ltd

L. Anti-Circumvention Measures

- What is protected?
 - Technological measure that effectively controls access to copyright materials
 - Technological measure that effectively restricts “use” of copyright materials i.e. copy restriction measures and distribution restriction measures

L. Anti-Circumvention Measures

• Civil Liability

- Act of knowingly circumventing a technological access control measure
 - Manufacture, import, distribute, offer to public, traffic in circumvention device **
 - Rendering of services to circumvent a technological measure
- **“Circumvention Device” includes computer programs and decryption codes.

• Remedies

- Injunction
- Damages (includes profits attributable to act)
- Statutory damages (\leq \$20,000/-)
- Order for delivery up or destruction

L. Anti-Circumvention Measures

• Criminal Liability

- If acts below done **WILFULLY** and for purpose of **commercial advantage** or **private financial gain**
 - 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 terms of 2 years

L. Anti-Circumvention Measures

- Examples of Circumventing a Technological Measure
 - Using a program or code to override access restrictions put in place by a copyright owner;
 - Distributing or manufacturing a program or device to bypass such restrictions;
 - Rendering IT services to do any of the above

L. Anti-Circumvention Measures

- Conditions for ACM provisions to apply
 - Work or subject matter is protected by copyright
 - Technological measure is used in connection with the exercise of a right in copyright
 - e.g. to block unauthorised access to a work to prevent infringement or to prevent unauthorised downloading

L. Anti-Circumvention Measures

- **Exceptions to ACM provisions: Acts that do not attract liability**
 - circumvention to identify or disable the collection of personal data;
 - circumvention to achieve interoperability of independently created program with another program;
 - circumvention by a researcher to test and analyze encryption technologies;
 - circumvention required to filter out inappropriate content on the Internet (for minors);
 - circumvention to legally test or investigate the security of computer systems or networks; or
 - circumvention in relation to excluded works gazetted by the Minister.

Useful resources

Public Outreach



- **Public Awareness**

- HIP Alliance (**H**onour **I**ntellectual **P**roperty)
- 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
- IP Infosheets & Infopacks
- Singapore statutes : <http://statutes.agc.gov.sg>

Intellectual Property Office of Singapore

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