

# Copyright



*Cashing In On Creativity*

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# Chapter 4

## Copyright – Cashing in on Creativity

### 4.1 What is a Copyright?

When you endeavour in putting your original ideas and artistic expressions into material forms, like a book, a painting, a stage performance, a computer software program, a music/movie recording and music sheets – these creative works are protected by a copyright.

A copyright does not protect an idea; rather, it protects the original expression of the idea. For example, if you come up with a story idea for a novel and verbally shares it with a friend, you are not entitled to sue your friend for an infringement of copyright if she beats you to the writing of the novel using your idea.

The copyright will only subsist once you reduce your story idea into a material form, such as a written note or the book itself.

#### 4.1.1 Examples of the types of work eligible for copyright protection:

- literary works e.g. books, novels, articles in magazines/journals, song lyrics
- artistic works e.g. paintings, drawings, sculptures, photographs, engraving, buildings/ building models
- dramatic works e.g. film/drama scripts, dance choreographies
- musical works e.g. melodies
- films
- sound recordings
- television and radio broadcasts

A copyright consists of a bundle of exclusive rights for its owner to:

- reproduce
- publish
- perform
- adapt
- communicate
- commercialise

the work in question.

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When another party carries out any of the above without the consent of the copyright owner, an infringement is said to have occurred with legal implications.

In Malaysia, the Copyright Act 1987 provides that this Intellectual Property right is automatically vested in the original creator of the work, provided that he:

- has reduced the work into a material form, e.g. a recording, a written documentation or a photograph
- has expended a reasonable amount of effort into ensuring that the work is original in character
- is a \*qualified person, or has produced or first published his work in Malaysia.

\*A 'qualified person' means an individual who is a citizen or resident in Malaysia; as well as a corporate body established in Malaysia that has a legal personality under Malaysian laws<sup>1</sup>.

However, there are a few exceptions to this, depending on the circumstances under which the author produces his work.

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## 4.2 Copyright Ownership in Differing Circumstances

What happens to copyright ownership if you are a freelance journalist and one day, writes a highly acclaimed story under the commission of a local newspaper? Who owns the copyright to this piece of writing?

Or, you are a full-time employee at an organization and you produced a broadcast advertisement for a client as part of your work description – who owns the copyright to the advertisement?

Generally, a copyright for a creative work is owned by its original author. However, there are two common exceptions to this general rule, which address the two questions above:

### 4.2.1 Copyright for work produced in the course of employment

In this situation, the copyright for the work produced by an employee in the course of his employment belongs to his employer – unless there is any contrary agreement between the two parties.

### 4.2.2 Copyright for work produced under special commissioning

When the author is commissioned by another party, the general rule is that the copyright for the work produced is owned by the commissioning party i.e. the individual or the company that is paying the author for the work – unless there is any contrary agreement between them.

However, when the commissioned work is a photograph, portrait or engraving – it is highly advisable that the commissioning party i.e. the client discusses the copyright ownership with the author before the work commences.

Sometimes photographers may wish to reserve the right to display your photograph as a form of advertisement in their premise, or there may be certain copyright clauses contained in the consumer agreement that the client may not be aware of.

Therefore, it is very important that you get the terms clear as it is definitely not a pleasant experience, if you were to, for example, pay a few thousand of dollars to get your wedding shots taken, only to realize at the end of the day that it is the studio and not you who reserves the right to duplicate the pictures!

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## 4.3 How Does a Copyright Protect Your Work?

### 4.3.1 Using the © Symbol

The standard practice of using the © is in the following format – the symbol followed by the year in which copies of the work were first made available, and then followed by the name of the copyright owner e.g.

© 2008 Intellect Worldwide Sdn. Bhd.

Sometimes, this can also be followed by statements such as ‘for Private Use Only’ (indicating that the copyright owner allows his work to be used for private purposes) or ‘All Rights Reserved’ (indicating that the owner does not allow use altogether) e.g.

© 2008 Intellect Worldwide Sdn. Bhd. All Rights Reserved.

### 4.3.2 The Implications of the © Symbol

This symbol simply serves as a notification of copyright existence by the copyright owner – it does not confer any substantive right to the owner, nor will it result in a loss of rights if the he does not use it.

However, by using this symbol, you are making a claim of copyright ownership. Therefore, in the event that your copyright is infringed, the accused infringer will not be able to rely on ignorance as a mitigating factor – and this is important because if the infringer successfully argues that he was not aware of your copyright protection, the court may order lower or no damages at all to be awarded to you!

### 4.3.3 Infringement and the Legal Remedies

The Copyright Act 1987 contains provisions for the acts that constitute infringement, as well as the legal remedies available for victims of copyright infringement.

### 4.3.4 When is copyright infringement deemed to have occurred?

A copyright infringement occurs when a person does something that only the copyright owner is entitled to do without his permission, as in to:

- reproduce
- publish
- perform
- adapt
- communicate
- commercialise

the work that is protected by copyright law.

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Your act is also tantamount to infringement even if you only take a part of the work e.g. photocopying and selling one chapter of a copyrighted book without the author's consent – as long as the courts decide the amount of the work you infringed upon is substantial.

Doing the following with an infringing copy of the work will also constitute an act of infringement punishable by law:

- reproducing infringing copies for commercial purposes
- selling or distributing infringing copies
- possessing or importing infringing copies for non-personal purposes
- publicly exhibiting infringing copies in the context of trade
- making or possessing any mechanical device intended to be use to make infringing copies i.e. multiple disc burner to make pirated copies of latest films

On the other hand, the act of reproducing, publishing, performing, adapting, communicating and commercializing of a copyrighted work are not acts of infringement if they are done by fair dealing for the following purposes:

- non-profit research
- private study
- criticism or the reporting of current events;

and these acts are accompanied by an acknowledgement of the title of the work and its authorship.

Generally, using copyrighted works for non-commercial purposes are not considered infringement as long as the original author, source and the title of the work are mentioned in the use. The law generally allows the public to use certain copyrighted works such as photographs and excerpts from publications for purposes such as illustration and education.

However, one interesting fact, and one that authors may not necessarily welcome – is that making a parody or a caricature out of a copyrighted work is also not an infringement act!

For example, walk into a major bookstore, and you may just find the Stephen Covey classic 'The 7 Habits of Highly Effective People' sold alongside 'The 77 Habits of Highly Ineffective People' by Jim Becker, a lesser-known author who parodied Covey's best-seller.

#### **4.3.5 What are the Legal Remedies to Copyright Infringement?**

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When your work has been infringed, upon proving infringement you may be entitled to the following remedies:

- injunction to stop the infringement
- damages
- account of profits

Generally, in infringement disputes, the burden is on the plaintiff to prove originality. For this reason, many authors have taken certain measures to protect their interests, such as:

- making a Statutory Declaration of their ownership and originality of the work before a Commissioner of Oath
- depositing a copy of their work with their lawyers or a depository
- sending a copy of their work to themselves, or another trusted party by post and subsequently leaving the envelope unopened. This is to use the unopened work to establish the date of existence of the work, as well as the work as it existed at the relevant time.

Such measures are helpful but ultimately it is still up to the courts to decide if there has been enough evidence to prove originality.

#### **4.3.6 International Copyright Protection**

Copyright for Malaysian works are protected internationally in many countries by virtue of the international agreements of which our country is a part – namely the Berne Convention for the Protection of Literary and Artistic Works that is administered by the World Intellectual Property Office (WIPO), and the Agreement on Trade Related Aspects of Intellectual Property Rights (the TRIPS Agreement) (1994).

Under such agreements, any works produced by a Malaysian citizen or resident will be protected in the other countries who have signed the agreement, just as if the work has been produced there. In some countries, registration may be available to facilitate the proof of copyright ownership in the event that an infringement occurs.

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## 4.4 How Can You Exploit Your Copyright?

Every now and then we salivate at the mega millions that authors like J.K. Rowling and film studios are reportedly making from the revenue and royalties they earn from their book and film copyrights.

Thousands or millions, it can't be denied that royalties at any amount make a very nice source of passive income – you produce your work once, and keep receiving the payment as long as there are people buying. You may also choose to sell the work on your own to enjoy the sales revenue.

Like a trademark, patent and other forms of Intellectual Property, a copyright is also an asset – therefore to exploit your asset you need to know the rights you have and have a strategy in place.

How do people make money from their copyrights? It all boils down to effective marketing – because there is no use having a copyright if your work is not known and in demand!

These are the steps you may take to cash in on a copyright:

- Get your product – your work – ready i.e. book, software, E-Book, articles, songs, paintings, photographs, short films etc.
- Get it known and publicized – through the Internet, word-of-mouth, social and professional networks. Many business-savvy artists attend conferences, seminars, networking sessions or any relevant events, and join organisations in order to meet industry people who may be interested in their work.
- Once interested parties e.g. publishers, music production companies, art exhibition centres, magazines start knocking on your door, it is time to consult your Intellectual Property consultant to determine the amount of royalties to be charged and draft your copyright licensing agreements!

These steps may seem simple, but do take note that they will require a lot of persistence and perseverance.

The hugely popular Chicken Soup for the Soul® series was rejected by 140 publishers before the authors found a company who believed in the now-worldwide bestseller<sup>2</sup>, and Vincent Van Gogh's paintings became valued only after his death – so do not expect anything to be easy!

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## 4.5 The Issues of Copyright Protection in Malaysia

Admittedly, our country is not well-known for its strong copyright laws – in fact, it is unfortunately quite to the contrary, especially in the entertainment industry.

We have been rather notorious for the easy availability of pirated movies and music DVDs. Based on a 2007 report by the Office of the US Trade Representative on the adequacy and effectiveness of Intellectual Property Rights protection in 87 countries, Malaysia remained on the Watch List for that year<sup>3</sup>.

While the US government acknowledged the improvements that have resulted from our IP enforcement actions in 2006, they are still deemed as not being adequate enough.

Our authorities have been raiding pirated discs manufacturing facilities and seizing pirated goods, in addition to setting up a specialized IP court to deal more effectively with civil and criminal copyright cases.

As the government works on improving the IP protection landscape in our country, we should also play our part in not taking IP awareness for granted.

If you are an artist, writer, musician, photographer, software developer or anyone involved in the creation of creative works, we strongly recommend that you educate yourself on your copyrights.

At Intellect, we believe in disseminating the message that ideas belonging to others are to be treated the same way as other physical objects. Children will appreciate that it is wrong to steal a classmate's eraser, therefore they should also be taught that copying someone else's essay is the same as stealing their ideas.

Adults, too, need to learn to view Intellectual Property on the same level as other tangible properties. After all, we are now living in the Knowledge Economy where wealth is increasingly built upon assets that do not come in tangible forms – as powerfully exemplified by the world's richest man, Bill Gates!

Let us all do our part to become a nation where Intellectual Property rights are acknowledged and respected.

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### References:

- 1 'The History of *Chicken Soup for the Soul*®'  
<http://www.chickensoup.com/cs.asp?cid=about>
- 2 'Watch List, 2007 Special 301 Report',  
[http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2007/2007\\_Special\\_301\\_Review/Section\\_Index.html](http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_Special_301_Review/Section_Index.html)

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