

MMDMC401 MANAGING AND EXPLOITING COPYRIGHT

INTRODUCTION TO COPYRIGHT

Why Copyright is Important?

The objective of copyright is to promote the public good by encouraging and fostering cultural and scientific activity. Copyright protects cultural works, the creative expression of thoughts and feelings. These works are in a variety of forms, art works, music, novels and poetry. They are the expression of a culture – its heritage, which is built on by each generation adding their own perspective to the existing culture, which will enrich the lives of generations to come. To demonstrate its importance to culture and society, copyright is recognized as one of the Human Rights in the Universal Declaration of Human Rights. Consequently, the value and benefits associated with copyright and the systems which support it cannot be underestimated. Many countries are now using copyright to protect valuable indigenous cultures, ensuring their vibrant and individual national cultural expression continues. The existence of strong and enforceable copyright laws is also a necessary precursor to participation in the global economic community, bringing particular benefits to the economies of developing countries. The internet and lower costs of communication means that copyright works can be made available more easily, enabling improvements in the education system and skills development within communities. It is for these reasons that creators, copyright owners and governments need to understand the key aspects of the copyright system, including its strengths and limitations. Copyright protection comprises both economic and moral rights. While these key aspects of copyright system have their rationales in two very different approaches to copyright - one as an economic driver and the other

as an author's right – their combination or synthesis in many economies allows copyright development to become an important tool to develop and enhance the cultural industries.

As definition **copyright** is a legal means of protecting an author's work. It is a type of intellectual property that provides exclusive publication, distribution, and usage rights for the author. This means whatever content the author created cannot be used or published by anyone else without the consent of the author. The length of copyright protection may vary from country to country, but it usually lasts for the life of the author plus 50 to 100 years.

Many different types of content can be protected by copyright. Examples include books, poems, plays, songs, films, and artwork. In modern times, copyright protection has been extended to websites and other online content. Therefore, any original content published on the Web is protected by copyright law. This is important in the digital age we live in, since large amounts of content can be easily copied and pasted.

So how do you obtain copyright protection? Fortunately, in most countries, copyright protection is automatic. This means whenever you publish original content, it is automatically protected by copyright law. For example, if you post a blog on the Internet, your content is automatically covered by copyright. In most cases, this type of copyright protection is all that is necessary. However, if you want others to know your content is copyright protected, you can post the copyright logo (©) next to your name on any Web pages that include your original content. You

may also want to include the years you have owned the content. Below is an example of a copyright line:

Copyright © 2007-2009 [your name].

In situations where it is critical to protect an author's rights, many countries provide copyright registration, which allows authors to register copyrighted content with a central agency. This makes it easier to prove ownership of content if it is ever disputed.

Copyright provides a helpful means of protecting original content. It serves to give people credit for the work they do, which is something we can all appreciate.

Therefore, if you ever consider copying someone else's content, think of how it would make you feel if someone copied your original work and published it as their own. If you ever would like to use another person's content, make sure to ask the author for permission first. And always give credit where credit is due.

L U 1 IDENTIFY EXPLOITATION OPPORTUNITIES FOR ORIGINAL WORKS

If you own the copyright in a work, you are free to exploit it on your own or license the use of it to another party (such as a book publisher). 'Exploit' in this context means to develop or make use of it. When considering whether to license your work, you should assess whether or not you are truly the owner of the work in question. For example, work might have been produced in the course of employment. If that is so, then copyright will normally reside with the employer rather than the

employee. Similarly, works with multiple authors will have shared copyright, making it impossible for only one of the contributors to license the whole work without consent of the other creators.

Copyright consists of a number of related rights, all of which may be licensed: one such right is the distribution right of a work, which only relates to the first sale and not subsequent sales. This means that once a physical copy of a work (e.g. a CD, a DVD, a book) is sold within a country, the rights holder cannot control the distribution of that copy any longer (in legal terms this is known as ‘exhaustion of rights’). Consequently, the buyer may resell that copy to others without the copyright owner’s consent. However, this principle does not apply to online distribution; in other words, while a CD or a hard copy book can be freely resold by its buyer, this is not allowed with a mp3 album or an e-book purchased online. Usually in these cases the end-user license states what one can or cannot do with that copy.

Other rights include the right to perform the work, the right to communicate (that is, to broadcast or transmit via the Internet) a work, and the right to adapt a work in certain limited circumstances. You can exercise more than one of these rights over a particular copyright work. There also exists the right to authorise another to carry out any of those activities.

1.1 Confirm original work to protect against unauthorized use

copyright is the right to copy. This means that the original creators of products and anyone they give authorization to are the only ones with the exclusive right to reproduce the work.

Copyright law gives creators of original material the exclusive right to further use and duplicate that material for a given amount of time, at which point the copyrighted item becomes public domain.

When someone creates a product that is viewed as original and that required significant mental activity to create, this product becomes intellectual property that must be protected from unauthorized duplication. Examples of unique creations include computer software, art, poetry, graphic designs, musical lyrics and compositions, novels, film, original architectural designs, website content, etc. One safeguard that can be used to protect an original creation is copyright.

Under copyright law, a work is considered original if the author created it from independent thinking void of duplication. This type of work is known as Original Work of Authorship (OWA). Anyone with an original work of authorship automatically has the copyright to that work, preventing anyone else from using or replicating it. The copyright can be registered voluntarily by the original owner if he or she would like to get an upper hand in the legal system if the need arises.

Not all types of work can be copyrighted. A copyright does not protect ideas, discoveries, concepts, and theories. Brand names, logos, slogans, domain names, and titles also cannot be protected under copyright law. For an original work to fall under creation, it has to be in tangible form. This means that any speech, discoveries,

musical scores, or ideas have to be written down in physical form in order to be protected by copyright.

Copyright vs. Trademarks and Patents

While copyright law is not all-encompassing, other laws, such as patent and trademark laws, may impose additional sanctions. Although copyrights, trademarks, and patents are frequently used interchangeably, they are different forms of protection for intellectual property.

Trademark laws protect material that is used to distinguish an individual's or corporation's work from another entity. These materials include words, phrases, or symbols—such as logos, slogans, and brand names—which copyright laws do not cover. **Patents** cover inventions for a limited period of time. **Patented materials** include products such as industrial processes, machines, and chemical positions.

Copyright can exist in any of the following types of work:

- *artistic works*, e.g. paintings, drawings, cartoons, sculpture, craft work, architectural plans, buildings, photographs, photographic imagery, maps, plans, special effects make-up
- *broadcasts*, e.g. television, radio
- *cinematograph films*, e.g. film, video, DVD
- *compilations*, e.g. anthologies, directories, databases
- computer programs

- *dramatic works*, e.g. choreography, screenplays, plays, mime pieces, performances
- *musical works/performances*
- *published editions*
- *sound recordings/performances textual material*, e.g. journal articles, novels, screenplays, poems, song lyrics, reports

Your work is under copyright protection the moment it is created and fixed in a tangible form that it is perceptible either directly or with the aid of a machine or device.

1.2 Exploit original work under copyright

As discussed above, copyright owners may exploit their works in a number of ways. They may wish to exploit the works themselves by reproducing, publishing, performing, communicating or making adaptations of their works.

Alternatively, a copyright owner may grant permission to someone else to exploit their works. This may be done by selling (otherwise known as assigning) or licensing copyright in their works to a third party. It is recommended that any agreement for permitting copyright use should be in writing. Rights may be limited in three ways: purpose, duration and geographic area of use.

EXPLOITATION RIGHTS/ MATERIAL INTERESTS

The material interests of the authors are extensively protected by the so-called exploitation rights of the author. The author is the owner of the exploitation rights (exception: exhibition rights). If works have been created by various joint authors, the exploitation rights may only be exercised jointly. The right to use a work may be transferred to someone else by way of a license.

Exploitation rights have a different importance for the different disciplines. The following factors are important:

The right of reproduction, i.e. "the right to produce copies of the work, whether on a temporary or on a lasting basis and regardless of by which means of procedure or in which quantity they are made"

The distribution right "the right to offer the original or copies of the work to the public or to bring it to the market",

The exhibition right, the right to display in public the original or the copies of an unpublished artistic work or an unpublished photographic work"

The right of recitation, performance, and presentation. it is affected whenever a work is interpreted and performed on stage before an audience in a theater. It also includes the right to make the performance publicly available beyond the space in which the personal performance takes place (e.g., live broadcast of a dance performance.

The right of presentation is the right to make visual art or a film perceivable to the public by means of technical devices

The right to make available to the public. Behind this somewhat difficult to understand concept hides the right to make a work accessible for retrieval by the public at a time and place of their choosing – typically by uploading it to the Internet.

The right of communication by video or audio recordings is the right to make recitations of a work perceivable to the public by means of video and audio recordings. This pertains to the right to determine whether the DVD of a dance performance may be shown to an audience on a screen. The distribution right is the only right affected by the purchase of a DVD – all other copyrights remain with the originator and must be acquired. This purchased DVD may thus not be used to perform any activities with copyright implications.

The adaptation and transformation right, pursuant, is always affected when the intellectual and aesthetic content of a work is altered and requires separate consent by the originator. This is particularly true in the case of changes to works of fine art and abridging of works.

The resale right is important for works of fine art and photographs: For every resale of a work in which an art dealer or auctioneer is involved, artists are entitled to a percentage of the sale price.

1.3: Seek advice, as required, to ensure that copyright issues are fully addressed in terms of

Copyright is generally owned by the creator of the work in the first instance. However, copyright ownership depends on a number of different things such as the type of work created or how the work was created, for example by an employee as part of their job. Determining who owns copyright in a work can be complex.

Material can have multiple copyright owners. They will all have equal rights in the material, unless there is an agreement in place.

There may be more than one copyright owner in certain types of works where there are layers of copyright. For example, in films, copyright in the soundtrack, screenplay and the film itself may be owned separately.

If the creator or copyright owner dies, copyright passes to the estate or a nominee.

Where the copyright owner or creator cannot be identified, the work becomes an orphaned work. Orphaned works can still be used as permitted under copyright, but if you need to seek permission contact the Copyright Office.

Copyright ownership may also be subject to a legal agreement such as a research, funding or publishing agreement or it can be transferred or assigned to a third party.

A licensing agreement is a legal contract between two parties, known as the licensor and the licensee. In a typical licensing agreement, the licensor grants the licensee the right to produce and sell goods, apply a brand name or trademark, or use patented technology owned by the licensor. In exchange, the licensee usually submits to a series of conditions regarding the use of the licensor's property and agrees to make payments known as royalties.

Licensing agreements cover a wide range of well-known situations. For example, a retailer might reach agreement with a professional sports team to develop, produce, and sell merchandise bearing the sports team's logo. Or a small manufacturer might license a proprietary production technology from a larger firm to gain a competitive edge rather than expending the time and money trying to develop its own technology. Or a greeting card company might reach agreement with a movie distributor to produce a line of greeting cards bearing the image of a popular animated character.

Importing the work into Rwanda

Here in Rwanda or other country there are some steps that you have to follow in order to get profit and publically known:

- **Licensing and assigning the work**, Assignment” is the transfer, by deed or agreement, of all intellectual property (IP) arising in a particular work or invention. The most commonly assigned forms of IP are copyright in literary works and rights in patentable inventions. It is also possible to assign rights in future IP (IP that has not yet been created). This is usually done as part of an agreement under which a sponsor provides funding for a research project or by a document called a deed when no funding is involved.
- **Making an adaptation of the work**: Once an adaptation is created, copyright exists in the adapted work. However, an adapted work does not have its own right of adaptation. You cannot make another adaptation from an adapted work. Copyright owners have the right to make an adaptation of their work or to allow others to adapt or modify their work. There are no provisions or

exceptions in the Copyright Act that cover adapting or modifying material. Permission is required from the copyright owner to make an adaptation.

- **making the work public for the first time, The Right to *Make a Work Public***
The right to *make his work public*, i.e., the right to take an action or give consent to an action that for the *first time* would *make the work* accessible to the *public* by its publication, *public* display, *public* performance, communication by wireless means or by wire or in any other manner
- **Performing/showing/transmitting the work in public**, a public display of copyrighted means to show a visual copy of the work to others. This covers individual images (stills) from a film, reproductions of paintings and drawings, sheet music from a musical works, or photos from other performance pieces. Public display can occur directly or indirectly through the use of film, slides, or television. It's important to bear in mind what is a public display vs. a private display. In general, it's a private display if you're showing a work to a small circle of family and friends. It's a public display when the showing goes beyond that small circle of family and friends.
- **Reproducing the work**, what does it mean to reproduce? To be considered a copy, a non-author must duplicate, transcribe, imitate, or simulate some substantial part of the work in a fixed form in a material object. The owner of the copyright is the right to make their own copies or phono records and can stop others from doing so as well. However, the right to reproduce the work cannot prevent a non-owner of the copyright from reading the work out loud or creating a choreographed dance from the work, if of course reading the

work out loud are creating a choreographed dance was not a public performance, which therefore could violate another right under the act.

- **Synchronizing the work**, a synchronization license is needed for a song to be reproduced onto a television program, film, video, commercial, radio, or even a phone message. Synchronization licenses are obtained from the composer, publisher or the music library. Permission from the record company (master use license) also needs to be obtained if a specific recorded version of a composition is used for a purpose.
- **Translating the work**, a translation is basically a derivative work. Only the copyright owner can authorize a translation that will be distributed. This includes works that are translated into another language and distributed in parts of the world where that language is spoken. Derivative works are infringing if they are not created with the permission of the copyright holder

L U 2 PROTECT ORIGINAL WORKS LOCALLY AND INTERNATIONALLY

Copyright is a set of ‘exclusive’ rights, giving creators the right to control the use of their work and the ability to earn from it. The term ‘exclusive’ in copyright law means that the copyright owner has the right to exclude others from using his or her work without first getting permission. Through the mechanism of copyright, creators’ efforts can be rewarded and that encourages the production of books, films, songs and other creative expressions. The ultimate goal of copyright is the creation and dissemination of knowledge. Therefore, one of the most delicate goals of copyright is to strike a balance between protecting creative works and allowing the public to use them.

Protection of your work under copyright law depends on a number of factors.

Firstly, it is important to remember that copyright protects only the expression of ideas, not the ideas themselves. This means for example that if you paint a landscape, another person is not prevented from taking a photograph of the same landscape. It also means that even if NYUNDO ART’S is copyright protected, you are still able to write your own story about a woman looking for love and keeping a personal diary, as long as you make sure that your work is substantially different to the one you are inspired by and therefore is original.

Here are some important things to know about copyright:

- Copyright generally lasts for the lifetime of the author plus 70 years. After that, the work is in the public domain and it may be re-used for free without the need to get permission from the copyright owner.
- Copyright applies to original literary, dramatic, musical or artistic works, and to sound recordings, films, broadcasts and the typographical arrangement of published editions.
- In most cases the work must be written down or in permanent/fixed form to attract copyright.
- The rules that matter are the rules of your own country; in legal terms, copyright law is territorial in nature.
- Copyright is granted automatically, no formalities as registration are required. Even if you do not register your work or do not attach the copyright symbol © to it, copyright law protects your work.

So, in order to benefit from copyright your work must be your own, you must have used your own skill, labor, judgement and effort to make sure that your work is original.

1. Economic rights

The copyright owner has the exclusive right to copy the work, issue copies of the work to the public, rent or lend the work to the public, perform, show or play the work in public, communicate the work to the public, edit or adapt the work, sell or license the copyright for use by others.

2. Moral rights

The copyright regime consists of not only economic rights but also moral rights. Moral rights include the right to be identified as the author of the work (often referred to as the right of attribution) and the right not to have the work subjected to 'derogatory treatment' (often referred to as the right of integrity), meaning to prevent a use of the work which offends or belittles its creator.

It is important to know that the moral right to be identified as the author of a work does not arise until it has been asserted. As such, it is good practice always to assert this right. You may do this by including a statement such as the following in your work:

However, if you made the work as an employee, your employer is usually the copyright owner, unless you have agreed otherwise. In these cases, contractual terms are often the actual rules governing the ownership of a work, so you should carefully check all clauses to understand who owns the several exclusive rights involved. If you are a student at University or Film School for example, the institution often has provisions for copyright in anything you create in connection with your enrolment.

L U 3 ASSIGN COPYRIGHT OF ORIGINAL WORKS

A copyright assignment is the transfer of an owner's property rights in a given creative work or works. Such transfers may occur on their own or as parts of larger asset sales or purchases. Copyright assignment agreements both provide records of ownership and transfer and protect the rights of all parties.

3.1 Negotiate deals for original work

Negotiation is a method by which people settle differences. It is a process by which compromise or agreement is reached while avoiding argument and dispute.

In any disagreement, individuals understandably aim to achieve the best possible outcome for their position (or perhaps an organisation they represent).

The process of negotiation includes the following stages:

- Preparation
- Discussion
- Clarification of goals
- Negotiate towards a Win-Win outcome
- Agreement
- Implementation of a course of action

In any negotiation, the following three elements are important and likely to affect the ultimate outcome of the negotiation:

- Attitudes
- Knowledge
- Interpersonal Skills

There are certain characteristics of the negotiation process. These are:

1. There is a minimum of two parties present in any negotiation.
2. Both parties have pre-determined goals that they wish to achieve.
3. There is a clash of pre-determined goals, that is, some of the pre-determined goals are not shared by both the parties.

4. There is an expectation of outcome by both parties in any negotiation.
5. Both parties believe the outcome of the negotiation to be satisfactory.
6. Both parties are willing to compromise, that is, modify their position.
7. The incompatibility of goals may make the modification of positions difficult.
8. The parties understand the purpose of negotiation

The 5 Negotiation Styles are:

1. Competitive

Competitive personalities are results-driven. They are focused and assertive in their communication and often aggressive. Competitive negotiators are strategic thinkers therefore have very little time for pleasantries.

2. Collaborative

Collaborative negotiators are open and honest, and understand the concerns and interests of the other party. They like to find creative solutions to make sure both parties are satisfied.

3. Compromising

A compromising negotiator's main concern is doing what is fair for both parties and finding middle ground. They would rather compromise on your own outcome to satisfy the other party.

4. Avoiding

Avoiding personalities really dislike negotiations! They may try to avoid situations that may result in conflict as they find them intimidating and stressful by staying behind the scenes of a negotiation.

5. Accommodating

Accommodating negotiators spend a great deal of time building and maintaining relationships with the other party. They are highly sensitive to the emotions, relationships and body language within the negotiation situation.