

MODULE

05

Copyright and Related Rights



# MODULE 05. Copyright and Related Rights

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### **INTRODUCTION**

Copyright protects the original literary and artistic creations of all types of authors, such as writers, composers, software developers, web designers and many other creators. In the past, copyright law was used to protect creative expressions of various kinds on papers or printer media, whereas, in the current internet era, copyright is relied upon by all types of digital content producers, distributors and retailers.

### **LEARNING OBJECTIVES**

1. You understand the basics of copyright and related rights.
2. You understand the importance of copyright ownership in works and how to use such works in your business.
3. You know the best way to use copyrighted works to support your business strategies.
4. You know how to avoid infringement of the copyright of others and in the case of infringement, how to minimize its potential damage.

## **LEARNING POINT 1: Basics of copyright**

### **1. Definition of copyright**

Copyright law of a country grants authors, composers, software writers, website designers, and other creators' legal protection for their literary and artistic creations, which are usually referred to as "works."

Copyright protects a wide variety of original and/or creative expressions, such as novels, poetry, music, paintings, photographs, sculptures, architecture, films, computer programs, video games, original databases, etc. In most countries, copyright also protects sketches, drawings or designs of manufactured products.



Copyright law gives the author of a work a bundle of exclusive rights over his work for a limited period of time. These rights enable him to control the use of his work in a number of ways and to receive remuneration. Copyright law also provides "moral rights" which protect an author's reputation and integrity.

## **A work must be ORIGINAL**

### **2. Requirements for copyright protection**

To qualify for copyright protection, a work must be original. In copyright law, originality relates to expression of thought and not to the underlying idea or thought. However, the exact meaning of originality under the copyright law differs from country to country. In general terms, originality refers to the fact that the work was independently created and it was not copied from

somewhere else. Copyright protection extends only to original contributions to a work and does not extend to any elements of a work that were borrowed from others. For example, if a new video game has used copyright material of others and/or has material which is in the 'public domain', then copyright protection would extend only to any original compilation of this material, and not to the borrowed material.

Even so, works enjoy copyright protection irrespective of their creative elements, quality or value (a drawing of a three-year-old child is also a work with full copyright protection), and do not need to have any literary or artistic merit (copyright also applies to purely technical guides, instructions manuals or engineering drawings).

Some countries require that the work be fixed in some material form. Fixation may mean, for example, that the work is written on paper, stored on a disk, painted on canvas or recorded on tape. In such countries, choreographic works, improvisational speeches or live performances that have not been notated or recorded, are not protected until recorded or otherwise fixed.

#### **More Reference 1-1: Copyright Protection Abroad**

Most countries are members of one or more international treaties to ensure, amongst other things, that a copyright work created in one country is automatically protected in all countries that are members of such international treaties.

##### **<Berne Convention>**

The most important international treaty on copyright is the Berne Convention for protection of literary and artistic works. If you are a national or a resident of a country party to the Berne Convention, or if you have published your work in one of the member countries, your work will automatically enjoy the level of copyright protection granted in the Berne Convention in all other countries that are party to this Convention. In addition, your work will be protected in the other member countries in the same way that the other country protects the works of its own nationals.

However, bear in mind that copyright protection remains territorial in nature. Your work will only enjoy copyright protection if it meets the legal requirements of the copyright law of the country where you seek protection. So you have a separate copyright protection system in each country, which may be based on one or more laws.

### More Reference 1-2: Copyright Notice

In most countries, a copyright notice is not required for protection. Nevertheless, it is strongly advisable to place a copyright notice, because it reminds people that the work is protected and identifies the copyright owner; such identification helps all those who may wish to obtain your prior permission to use your copyright protected work(s). Placing a copyright notice on your work is a very cost-effective safeguard. It requires no significant extra expense, but may end up saving costs by deterring others from copying your work.

There is no formal procedure to put the notice on your work, and it can be written, typed, stamped or painted.

A copyright notice generally consists of:

1. the word "copyright", "copr." or the copyright symbol "©";
2. the year in which the work was first published; and
3. the name of the copyright owner.

Example:

© WIPO 1998-2005

For a work that is constantly updated, such as material on a website, it is possible to include the years from the time of first publication to the present.

Ⓟ

For sound recordings, the letter "P" (for phonogram), in a circle or in brackets, is used. The Phonograms Convention allows a member country to require that symbol and the year of first publication appear on copies of phonograms (for example, on CDs or audio tapes) in order to be protected in that country.

**All Rights Reserved.**

If you significantly modify a work, it is advisable to update its copyright notice. It is also advisable to supplement the notice with the warning "All Rights Reserved" or a listing of which acts may not be performed without permission. "All Rights Reserved" means that the rights contained in the product bought are still protected, not the contrary.

**More Reference 1-3: Other legal means to protect original work**

Copyright is not the only means available to protect original creations which have economic value for your company:

1. **Patent law** protects inventions if they fulfill specified legal requirements. While patents give your company a monopoly over the technical implementation of an idea or concept underlying the invention, copyright only protects the literary or artistic (and not functional) expression of an idea.
2. **Trademark law** may protect words, phrases, slogans, logos or other symbols that your company uses to identify its goods or services. Trademark law is often used in conjunction with copyright law to protect advertising material from being copied. The form, design or packaging of a given product may also be considered to be a distinctive feature of the product in question and may be protectable as a three dimensional trademark.
3. **Industrial Design:** The aesthetic aspects or outward appearance of your products can be protected as an industrial design. Thus the shape of a lamp; the pattern, lines and colors of a textile; the configuration of a furniture; the novel shape of a packaging, etc. may be registered as industrial designs, provided the legal requirements are fulfilled.
4. **Trade Secret:** Valuable confidential business information, such as technical drawings, technical manuals, commercial or financial information, may be protected both as a trade secret and under copyright law. Any confidential business information which provides your enterprise with a competitive advantage may be protected by contract or by trade secret law. Such information may include a sales method, a distribution method, consumer profiles, advertising strategies, lists of key suppliers and clients, details of manufacturing processes, a marketing plan, etc. However, trade secrets are only protected if your company has taken "reasonable steps" to keep the information confidential.



5. **Unfair Competition:** Many countries have unfair competition laws that allow you to act against unfair business behavior of competitors. On this basis, actions may be brought forward against unfair and misleading advertising and promotional methods. Moreover, protection under unfair competition law may often grant complementary protection against copying of products, including software.

## LEARNING POINT 2: Copyright and related rights

### 1. Scope of copyright protection

#### (1) Works protected by copyright

Copyright law protects works. Almost all national laws provide for protection of the following types of works:



- a. Literary works (such as books, written speeches, magazines, newsletters, trade journals, training materials, technical papers, instructions manuals, catalogs);
- b. Musical works (such as songs, operas, musicals);
- c. Dramatic works (such as dance, plays, mime);

- d. Artistic works (such as cartoons, paintings, sculptures, architectural works, blueprints, computer and laser artwork);
- e. Photographic works (such as photos, gravures);
- f. Computer programs, software, and original databases;
- g. Maps, globes, charts, diagrams and technical drawings;
- h. Advertisements, commercial prints and labels;
- i. Motion pictures (such as films, documentaries, television advertisements);
- j. Multimedia products (works that combine text with visual images, sound and computer programs, such as video games); and
- k. Works of applied art (such as artistic jewelry, wallpaper, carpets).

Copyright usually protects not only works in printed form but also in electronic or digital form. Works are protected irrespective of the fact that they are made available on computer diskettes, hard drives, CD-ROMs, VCDs, DVDs, or whether they are transmitted by radio stations, television stations or downloaded via the Internet.

## **(2) The things copyright does not protect**

Copyright does not apply to:

- a. **Ideas.** Copyright law only protects the way ideas are expressed in a particular creation, but does not protect the underlying idea, procedure, method of operation, mathematical concept or system involved. Protection for such items may be possible either under the patent law or as trade secrets, if the relevant conditions are fulfilled.



### Example

Your company has copyright over a book that describes a system for beer processing. The copyright in the book will allow you to prevent others from copying the text and illustrations of the book, but it will not give you any rights to prevent competitors from using the machinery, processes, and merchandising methods described in the book.

- b. **Facts.** Copyright does not protect facts - whether scientific, historical, biographical or news of the day - but only the manner in which such facts are expressed, selected or arranged.



### Example

A biography consists mainly of facts about a person's life. The author may have spent considerable time and effort discovering things that were previously unknown. Still, others are free to use such facts as long as they do not copy the particular manner in which the facts are expressed.

News reports are based on facts which by themselves are not protected

by copyright. Nevertheless, there will be copyright in the way those facts are expressed by a particular journalist and additional copyright in the total compilation of the newspaper and the typographical lay-out. (Note, however, that many copyright legislations contain certain exemptions and limitations on the protection offered to news reports.)

- c. **Useful articles.** In some countries, copyright protection is not available to useful articles, such as bathroom sinks, clothing or computer monitors (however, the design of a useful article may be protected as an industrial design). Nevertheless, copyright protection will still apply to such useful articles to the extent that the object contains pictorial, graphic or sculptural features that can be "identified separately from the utilitarian aspects" of the article.



Example

A plain white T-shirt would not enjoy copyright protection. However, it does not mean that if you place a copyright protected artwork on the T-shirt, you will then lose protection of the artwork because it has become part of a useful article. While the T-shirt does not enjoy copyright protection, the artwork still does, no matter onto what product it is applied.

- d. **Names, titles, slogans and other short phrases.** Single words, names, titles, slogans, headlines and other short phrases are generally excluded from copyright protection. But some countries allow protection if they are highly creative. This means that the name of a product or an advertising slogan you use for your business will usually not be

protected by copyright (but they may be protectible under trademark or unfair competition laws). Logos, on the contrary, may be protected under copyright as artistic works (as well as by trademark law, if the requirements for such protection are fulfilled).

- e. **Official government works.** Official government works such as copies of statutes or judicial opinions also have no copyright protection in some countries.

### **(3) Economic rights & Moral rights**

Copyright provides two sets of rights: economic rights and moral rights. The economic rights protect the author's economic interests and allow the author to earn a profit by direct or indirect exploitation of a work. The moral rights protect the creator's creative integrity and reputation as expressed through a work.

#### a. Economic rights

Economic rights give the owner of copyright the exclusive rights to authorize or prohibit certain uses of a work. The scope of these rights, and the limitations and exceptions, differ, depending on the type of work concerned, and they also vary from country to country. Generally, the economic rights include the exclusive rights to:

- **Make reproductions or copies of the work in various forms.** For example, copying a CD, photocopying a book, downloading a computer program, scanning a text, printing a cartoon character on a T-shirt, or incorporating a portion of a song into a new song.
- **Distribute the work to the public.** Copyright allows its owner to prohibit others from selling, leasing, licensing, renting or lending unauthorized copies of the work. However, in many countries, the right of distribution is limited by the "first sale" or "exhaustion" doctrine, which provides that once you have authorized the first sale or distribution of a particular copy or phonorecord, you have no say

over how that copy or phonorecord is further distributed in the territory of the relevant country(ies). In other words, a copyright owner can control nearly every detail of the "first sale" of the works, including timing, price and conditions. But, once sold, the purchaser can then resell the copy or phonorecord, lend it to a library, or give it away, etc. However, the purchaser cannot make copies or prepare derivative works based on it.

- **Rent or lend copies of the work.** This right generally applies only to certain types of works, such as cinematographic works, musical works, or computer programs. Some countries do not recognize rental or lending rights, but, instead, grant the copyright owner the right to receive remuneration from such rental or lending of a copy of the work.
- **Make translations or adaptations of the work.** Such works are called "derivative works." For example, translating an English instruction manual into other languages, adapting a novel to make a movie, rewriting a computer program in a different computer language, making music arrangements, or making a toy based on a cartoon figure. If sufficiently original, derivative works are themselves protected by a separate copyright.
- **Communicate the work to the public.** This includes communication by means of public performance, recitation, display, broadcasting or communication by radio, cable, satellite or Internet. For instance, 'showing' photographs on a website, or making broadcasts available through a public television set in a bar.
- **Perform, show or play the work in public.** For example, performing plays and music, playing sound recordings, showing films or videos in public, exhibiting a painting in a gallery, delivering lectures in public, and enabling a broadcast to be seen or heard in public.
- **Receive a percentage of the sale price if the work is resold.** This is referred to as "resale right" or "droit de suite" and only applies in

certain countries to certain types of works (e.g., paintings, drawings, prints, collages, sculptures, engravings, tapestries, ceramics, glassware, original manuscripts, etc.). Resale rights give creators the right to receive a share of the profit made on certain subsequent resales of their works. Such share generally varies from 2% to 5% of the total sales price.

b. Moral rights

Most countries recognize moral rights, but the scope of these rights varies widely (the United States of America, for example, only have moral rights in works of fine art). Most countries recognize at least the following two types of moral rights:

- **The right to be named as the author of the work ("authorship right" or "paternity right").** When the work of an author is reproduced, published, communicated to the public, or exhibited in public, the person responsible for doing so must make sure that the author's name appears on or in relation to the work, whenever reasonable; and
- **The right to protect the integrity of the work.** It prohibits the making of any changes, modifications or alterations to a work that would tend to damage the author's honor or reputation. For example, a photographer has the right to prevent colorization of black and white pictures.

Unlike economic rights, moral rights cannot be transferred to someone else, because they are personal to the creator (however, they may pass on to the creator's heirs). Even if you sell your economic rights in the work to someone else, you retain your moral rights in the work. However, in some countries, an author may waive his moral rights by a written agreement, whereby he agrees not to exercise some or all of

his moral rights. Other countries allow such agreements but subject to certain conditions, for instance, for a limited period of time.

#### Example

Imagine the use of a popular character from a children's book in a pornographic film. Even if the author no longer owns any economic rights in the book, in view of moral rights, the author will be able to object to such use and take effective steps to prevent or stop it.

## **2. Basics of related rights**

### **(1) Definition of related rights**

There are three kinds of "related rights" or "neighboring rights":

- a. rights of performers(actors, musicians, singers, dancers, or generally people who perform) in their performances;
- b. rights of producers of sound recordings(also called phonograms) in their recordings (cassette recordings, compact discs, etc.); and
- c. rights of broadcasting organizations in their radio and television programs and in Internet broadcasts such as 'podcasts'.

#### **<Distinction between copyright and related rights>**

Copyright and related rights protect works of different categories of people. Copyright protects works of authors, whereas related rights are rights granted to a few categories of people for their important role in communicating and disseminating some types of works to the public.

#### Example

In the case of a song, copyright protects the music of the composer and the words of the writer, and related rights would apply to



- a. the performances of the musicians and singers who perform the song;
- b. the sound recording of the producer in which the song is included; and
- c. the broadcast program of the organization that produces the program containing the song.

**(2) Rights that related rights provide**

- a. Performers (such as actors, singers, musicians and dancers): Most copyright or related rights laws require you to obtain the consent of the performer prior to recording, broadcasting or delivering by cable a live performance, as well as prior to reproducing recordings of their performances. Certain countries, such as the member States of the European Union, also grant performers a rental right in respect of phonograms and audiovisual works containing their performances.



- b. Producers of phonograms: They have a legal right in their recordings to take action against unauthorized copying, use or distribution (piracy). The most important rights here are the right to control the reproduction of their phonograms, and to receive equitable remuneration when their phonograms are broadcast or communicated to the public. In many countries, producers can also prohibit the importation and the distribution of their phonograms.



- c. Broadcasters: They enjoy the right to control the rebroadcasting, fixation (recording) and reproduction of their broadcasts. In certain countries, they also have the right to authorize or prohibit cable transmissions of the broadcasts.



The protection offered by related rights in no way detracts from any copyright protection that may exist in the works being performed, recorded or broadcast. Thus, for example, the right given to broadcasters is separate from the copyright in the films, music and other material that is transmitted.

### 3. Period of protection

Unlike other IP rights where registration is required, copyright and related rights protection itself does not depend on official procedures. A work is automatically protected as soon as it exists, without any special registration, deposit, payment of fee or any other formal or administrative requirement.

Copyright lasts only for a limited time. Once your copyright has expired, the material is no longer protected, and it is said to be in the public domain.

For most works, and in most countries, protection of the economic rights lasts for the lifetime of the author plus an additional period of at least 50 years. In a number of countries, this period is even longer (for example, 70 years after the death of the author in Europe and in the United States of America). It is, thus, not only the author who benefits from the work but also his/her heirs. If several authors are involved (work of joint authorship) then the term of protection is calculated from the death of the last surviving author.



Depending on the national law, special provisions may apply to certain categories of works, especially for:

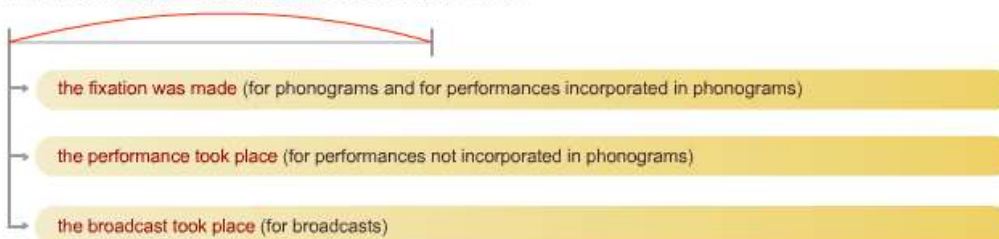
- (1) works made by employees and commissioned works (the duration is sometimes 95 years from publication or 120 years from creation);
- (2) works of joint authorship;

- (3) cinematographic works;
- (4) anonymous or pseudonymous works;
- (5) photographic works and works of applied art (which sometimes have a shorter term of protection);
- (6) works created by the government (which may be excluded from copyright protection);
- (7) works published after the author has died; and
- (8) typographical arrangements.

The term of protection of moral rights differs: in some countries, moral rights are perpetual, whereas in others, they expire at the same time as the economic rights.

The duration of protection for related rights is much shorter than for copyright. In some countries, related rights are protected for a period of 20 years, computed from the end of the year in which the fixation was made (for phonograms and for performances incorporated in phonograms); the performance took place (for performances not incorporated in phonograms); or the broadcast took place (for broadcasts). Many countries, however, now protect related rights for 50 years after the performance, fixation or broadcast.

In many countries, it is **50 years** from the end of the year in which



In some countries, related rights are protected only for a period of 20 years from the date of the performance, fixation or broadcast.

Compared to other types of IP, the term of protection for copyright is relatively long. The rationale behind is that those who create original expressions need protection for their works so that they can receive appropriate compensation for their intellectual effort.

The real goal of copyright is to provide for the general welfare and promote the progress of science and arts by encouraging further creation. The rationale behind copyright is to encourage the production of new works, both by guaranteeing creators some exclusivity for a limited time, and by making sure that there is a robust public domain of copyright-free material that creators can draw on and incorporate into new works.

Copyright tries to find a balance needs between the right of all to participate freely in the cultural life of the society and to enjoy the artistic and literary creations, and the right of the author to the protection of his moral and material interests.

#### **More Reference 2-1: A work in the public domain**

If no one has copyright in a work, that work belongs to the public domain and anyone may freely use it for any purpose whatsoever. The following types of works are in the public domain:

1. a work for which the copyright protection period has expired
2. a work that cannot be protected by copyright (e.g., title of a book); and
3. a work for which the copyright owner has explicitly abandoned his rights, for example, by putting a public domain notice on the work.

Absence of a copyright notice does not imply that a work is in the public domain, even if the work is available on a website.

## **LEARNING POINT 3: Ownership of copyright**

### **1. Meaning of ownership of copyright**

The meaning of 'authorship' and of 'ownership' is often confused. The author of a work is the person who created the work. A person who merely contributes ideas, information or suggestions and who does not contribute to the expression of the work is not an "author." This means that even if you come up with an idea for an artwork, for example, you will not be considered as the "author" if you did not actually create the artwork. If the work was created by more than one person, then all the creators are considered as co-authors or joint authors. The issue of authorship is especially relevant in connection with moral rights.

Copyright ownership is a different issue. The owner of the copyright in a work is the person who has the exclusive rights to exploit the work, for example, to use, copy, sell, and make derivative works. Generally, copyright in a work initially belongs to the person who actually created it, that is to say, the author. However, this is not the case in every country and may particularly not be the case in the following circumstances:

- (1) if the work was created by an employee as part of his job;
- (2) if the work was commissioned or specially ordered; or
- (3) if the work was created by several persons.

Note that contractual agreements may alter or clarify the general results established by law in respect of ownership of copyright. For some more details, see the following three sections.

## **2. In case of commissioned works**

### **(1) Who owns the copyright in commissioned works?**

If a work was created in the course of a commission contract, the situation is different. In most countries, the creator owns the copyright in the commissioned work, and the person who ordered the work will only have a license to use the work for the purposes for which it was commissioned. Many composers, photographers, freelance journalists, graphic designers, computer programmers and website designers work on this basis. The issue of ownership most often arises in connection with re-use of commissioned material.

#### Example

You outsource the creation of an advertisement for your company. At the time, you intend to use it to promote your new product at a trade show. Under most national laws, the advertising agency will own the copyright, unless it was expressly agreed otherwise in the contract. Some time later, you want to use parts of the advertisement (a graphic design, a photo or a logo) on your new website. You must take permission of the advertising agency to use the copyright material in this new way. This is because the use of the material on your website wasn't contemplated or envisaged at the time of the original contract.

Nevertheless, there are some exceptional cases, such as photographs taken for private purposes, portraits and engravings, sound recordings, cinematographic films, where, in some countries, the one who commissions the work owns the copyright in it, unless agreed otherwise.

As is the case in the employer-employee context, it is always a good idea to address copyright ownership issues in a written agreement which should be entered into before commissioning external creative services.

## **(2) Ownership of Copyright and License/Assignment Agreements**

When you enter into a relationship involving the creation of a work that would be protected by copyright, be sure that you know what rights you own in the work according to the national law(s). Be clear about the uses you want to make of the material and consider whether or not you need to own copyright. This may depend on:

- a. whether or not you want to prevent unauthorized uses;
- b. whether or not you want to license the work to others;
- c. whether or not you want to re-use the work for different purposes in the future; and
- d. how much you want to pay to the author of the work.

In order to ensure ownership of the copyright in a work, you may:

- a. sign a written agreement with the author (or the current copyright owner) of the work, stating that the copyright is transferred, or the rights concerned are licensed, to your company before commencement of any work. In practice, a clause on the envisaged copyright assignment/license should be included in the basic commissioning or employment contract;
- b. obtain a waiver of moral rights, if need be;
- c. obtain confirmatory assignment documents immediately after completion of the work, specifically naming the copyright work by title;
- d. register the work with the national copyright office, if possible.

### **3. In case of works created by an employee**

#### **(1) Who owns the copyright in works created by an employee?**

In some countries, if a work was created by an employee within the scope of his/her employment, then the employer automatically owns the copyright, unless otherwise agreed. But this is not always the case. Under the copyright law of some other countries, the transfer of rights to the employer may not be automatic and/or may have to be specified in the employment contract.

##### Example 1

A computer programmer is employed by a company. As part of his job, he makes video games, during normal working hours and using the equipment provided by the company. The economic rights over the software will, in most countries, belong to the company.

##### Example 2

A journalist writes feature articles for the newspaper where she is employed. In most countries, the employer will own the right to publish the articles in the newspaper, even without an explicit agreement to that effect in the employment contract. In some countries, however, the journalist will preserve the right to publish a later compilation of the articles in a book, unless the employment contract stipulates expressly otherwise.

Disputes often arise in the event an employee does some work at home or after hours, or produces work not within the scope of the employee's ordinary employment. It is a good practice, as a precautionary measure, to have employees sign a written agreement that clearly addresses all the relevant copyright issues before commencement of any work.



#### 4. In case of works created by several authors

##### (1) Who owns the copyright in works created by several authors?

A basic requirement of co-authorship is that each co-author's contribution must itself be copyrightable subject matter. In case of co-authorship, the rights are usually exercised on the basis of an agreement between all the co-authors. In the absence of such agreement, the following rules generally apply:

- a. **Joint works.** When two or more authors agree to merge their contributions into an inseparable or interdependent combination of the individual contributions, that is, into a unitary whole, a "joint work" is created. An example of a joint work is a textbook in which two or more authors contribute separate components that are intended to be combined into a single work. Joint authorship is a matter of intention it does not happen by accident or by someone contributing something to be put in a work.

In a joint work so created, the contributing authors become the joint owners of the entire work by operation of copyright law. This has important implications relating to how the work may be used and who may authorize any use. Many countries require that all joint owners must consent to exercise of copyright. In other countries, for example, the United States of America, any one of the joint owners can exploit the work without permission of the other co-author(s) (but must share the profits generated from such use). A thoughtful agreement among the authors or owners is usually preferable to joint copyright ownership. In fact, in general, joint copyright ownership is problematic and, whenever possible, should be avoided as it may be a huge and potentially complex long term partnership. When it cannot be avoided, then joint copyright owners should enter into a detailed written agreement, specifying such topics as ownership and use issues, rights to revise the

works, marketing and sharing of any revenue, and warranties against copyright infringement.

- b. **Collective works.** If the authors do not intend the work to be a joint work and would like their contributions to be used separately, then the work will be deemed to be "collective." Examples of collective works are a CD which is a compilation of songs by various composers or a magazine containing articles by freelance authors. In that case, each author owns the copyright in the part he created.
  
- c. **Derivative works.** A derivative work is a work based on one or more pre-existing works, such as a translation, musical arrangement, art reproduction, dramatization or motion picture version. Making derivative works is an exclusive right of the copyright owner. Therefore, if the original work is protected by copyright, you cannot prepare a derivative work without the copyright owner's permission. For example, the author of Harry Potter books was paid a considerable remuneration for the right to make movies from her best-selling novels. 'West Side Story', on the contrary, is based on Shakespeare's 'Romeo and Juliet', which is the 'public domain'. Anyone is free to write and exploit a screenplay based on that novel.

A derivative work itself can qualify for separate copyright protection, but the copyright extends only to those aspects which are original to the derivative work. For example, the copyright in a collage is independent of, and does not affect or enlarge the scope, duration, ownership, or subsistence of any copyright protection in the borrowed artworks, photographs, magazine advertisements, etc. The collage artist enjoys copyright only in the new matter that he has added (or in his own selection, arrangement and elaboration of the preexisting works), but not in the underlying works themselves.

In practice, it is not always easy to distinguish a joint work from a collective or a derivative work. Indeed, the various authors of a joint work often make their respective contributions independently and at different times, so that there may be 'earlier' and 'later' works. It is the mutual intent of the co-authors whether or not to be joint authors that will determine, in most countries, joint-work or a collective/derivative work. Joint authorship requires intent - without the intent to create a joint work, two or more authors producing inseparable or interdependent works will produce a derivative or collective work.

#### **More Reference 3-1: Copyright infringement**

1. Your economic rights may be infringed if someone, without authorization, is:

- (1) doing an act that you alone have the exclusive right to do (e.g. making a copy of a manual);
- (2) dealing commercially with an infringing work (e.g., selling a pirate CD) (in some countries); or
- (3) importing an infringing work (in some countries)

Unless the above fall within a legal exception or is otherwise excused.

There may be copyright infringement, even if only a part of a work is used. Infringement will generally occur where a "substantial part" – that is an important, essential or distinct part – is used in one of the ways exclusively reserved to the copyright owner.

However, there is no general rule on how much of a work may be used without infringing copyright. The question will be determined on a case-by-case basis, depending on the facts and circumstances. For example, twenty seconds of a four-minute song may constitute an infringement if it is seen as a vital and material part of the song.

2. Your moral rights would be infringed:

- (1) if your contribution, as author of the work, is not recognized;

- (2) if the copier passes himself off as the author of the work; or if your work is subjected to derogatory treatment or is cut or modified in a way that would be prejudicial to your honor or reputation.

### **More Reference 3-2: How to get income from copyright**

There are many ways to commercialize your original and/or creative works:

1. you may simply sell the original works that are protected by copyright, or make copies or reproductions and sell the copies;
2. you may allow someone else to reproduce or otherwise use the works; this can be done by licensing your economic rights over the works; or
3. you may also sell (assign) your copyright over the works, either entirely or partly.

### **More Reference 3-3: Role of CMOs**

CMO (Collective Management Organization)

1. CMOs act as an intermediary between users and a number of copyright owners. Generally, there is one CMO per type of work and per country. However, CMOs exist for only some types of works, such as reprography, music, screen writing, film, television and video, visual arts and photography.
2. On joining a CMO, members notify the CMO about the works that they have created or own. The works are then included in the repertoire of the organization, which is consulted by interested persons or companies.
3. In order to enable the copyright or related rights owners to be represented internationally, reciprocal agreements have been entered into with other CMOs throughout the world. The CMOs then grant copyright licenses on behalf of their members, collect the payments and redistribute the amount collected, based on an agreed formula, to the copyright owners.

Details of the relevant CMOs operating in your country may be obtained from the national copyright office.

## **LEARNING POINT 4: Using works owned by others**

### **1. When do you need permission?**

Most businesses use others' copyright or related rights works on a regular basis. It is important to understand how you may use such works in your business without infringing copyright.

In principle, the use of any works in which someone else owns copyright requires that owner's prior consent if the planned exploitation implies the use of all or part of the rights granted to the copyright owner. For example, if you want to use a photograph on your website, you will be both reproducing it and communicating it to the public so, you will need permission from the owner. If you wish to play recorded music for your customers, or play the radio so that customers can hear it, you will need a license, to play the music, from the owner. If you want to photocopy a training manual, you will need permission from all the owners of different types of copyright works (for example, for text, images, artworks, etc., which may have different owners). Even if you use just a part of a copyright work, you will generally need prior permission.

The best way to avoid infringement is by obtaining express written permission of the copyright owner before you use or exploit the work. As a rule of thumb, it is advisable to obtain expert advice before negotiating the terms and conditions of your licensing agreement. This may be needed and useful even when a license is initially offered on standard terms and conditions.

### **2. When you don't need permission**

Type of content or material that you are entitled to use without permission

(1) The content or material which is not protected under copyright law. For

example, if you are using the facts or ideas from a protected work, rather than the author's expression;

(2) The work which is in, or has fallen into, the public domain; and

(3) The content or material which is covered by the concept of 'fair use' or 'fair dealing' or by a limitation or exception specifically included in the national copyright law.

### **3. Process to get authorization**

The best way to proceed to get authorization to use works owned by others is probably to first see if the work is registered in the repertoire of the relevant collective management organization, which considerably simplifies the process of obtaining licenses. Failing that, you will need to contact the copyright owner or agent directly. The person named in the copyright notice is probably the person who was the initial copyright owner, but over a period of time, for various reasons, the copyright is often transferred to someone else.

By searching the national copyright register (if available) you should be able to identify the current copyright owner. In case of written or musical works, you may contact the work's publisher or the record producer, who will normally own the right to reproduce the material. If you are unable to locate the copyright owner, you may consider placing a query in a newspaper or magazine to seek information about the identity of an author or his/her heirs.

Once the copyright owner has been identified, the terms and conditions for its use must be negotiated, and a licensing agreement concluded. Remember that there might be several "layers" of rights and thereby several categories of right owners, for example, both a music publisher for the composition and a recording company for the recording of music (and often also the performers). Or, if you wish to use a photo from a journal, the publisher may own the

copyright for the photo but if the subject of the photo is a well-known person, you may also need to obtain permission from the individual in the photo and the photographer.

#### **4. How to reduce the risk of infringement**

Litigation over copyright infringement may be an expensive affair, and it would be wise to implement policies that help avoid infringement. It is recommended to:

- (1) educate your staff so that they are aware of possible copyright implications of their work;
- (2) obtain written permission, licenses or assignments, where needed, and ensure that staff are familiar with the scope of these permissions, licenses or assignments;
- (3) mark any apparatus that could be used to infringe copyright (such as photocopiers, video recorders, computers, CD and DVD burners) with a clear notice that the apparatus must not be used to infringe copyright;
- (4) prohibit your staff explicitly from downloading music, video films, etc. from the Internet on office computers; and
- (5) if your business makes frequently use of products protected by TPMs, carefully develop policies to ensure that employees do not circumvent TPMs without authorization from the copyright owner, or do not exceed the scope of their authorization.

#### **More Reference 4-1: How to find out whether a work is still protected**

In accordance with the author's moral rights, his or her name will normally be indicated in connection with the work, and the year he or she died maybe available in bibliographic works or public registers.

If that search does not give clear results, you may consult the copyright

register of your country's copyright office (if any) to check for any relevant information or you may contact the relevant CMO or the publisher of the work.

Remember also that there may be several copyrights in one product, and these rights may have different owners, and with different periods of protection.

For example, a brochure may contain text and images that are protected by several and separate copyrights. So, even though the text may be in the public domain, and therefore may be used freely, the images may be under copyright protection and, therefore, prior written permission to use such images would be needed.

#### **More Reference 4-2: Using a work under a limitation or exception**

All national copyright laws include a number of limitations and exceptions, which allow either free use of works under certain circumstances, or use without permission but against a payment.

The exact provisions vary from one country to another, but generally exceptions and limitations include the use of a quotation from a published work (that is, to use short excerpts, as illustration or documentation, in an independently created work); some extent of copying for private and personal use (for example, for research and study purposes); some reproduction in libraries and archives (for example, of works out of print, where the copies are too fragile to be lent to the general public); reproduction of excerpt of works, or short works, by teachers for use by the students in a class; or the making of special copies for use by visually handicapped persons (for example, copies in Braille or audio books).

Numerous other limitations or exceptions for the benefit of various groups, exist in different national copyright and related rights laws. Quite often, the limitations and exceptions are described exhaustively in the national law, which should be consulted for guidance. Alternately, seek expert advice.

In common law countries, such as the United States of America, works are subject to "fair use." Here, the description in the copyright law is less specific. In practice, the permitted use to be considered "fair use" is determined by the relevant courts that apply various factors, such as:



1. the amount of the work used;
2. the nature of the copyright work;
3. the nature of the use (e.g., commercial or non-profit); and
4. the effect of the use on the potential market for the original work.

Examples of activities that may be permitted as "fair use" include: distributing copies of a picture from a book, periodical, or newspaper in class for educational purposes; imitating a work for the purpose of parody or social commentary; making quotations from a published work; and reverse engineering software to achieve compatibility.

Note: Even if you use other people's work under these provisions, you still need, in most countries, to cite the name of the author (moral right).

#### **More Reference 4-3: Using works published on the internet**

Works published on the Internet are protected by copyright in the same way as works published by any other means.

Numerous websites contain text, music, photographs, multimedia products, audiovisual productions or drawings. These works are protected, provided they meet the normal copyright requirements.

Often, you will find copyright information or terms and conditions of use on the home page of the website. In the absence of any clear statement or notice, you should seek prior written or formal permission to download or copy the material, if your intended use is covered by the protection.

## QUIZ

### Q1. Identify the incorrect statement

- 1) Copyright grants authors, composers, artists and other creators legal protection for their literary, artistic, dramatic and other types of creations.
- 2) Copyright usually protects not only works that are expressed in print, but also works that are created or stored in electronic or digital media.
- 3) Copyright protects not only the way in which an idea is expressed, but also the underlying ideas or concepts in a particular creation.
- 4) Unlike most other IP rights where registration is required, copyright and related rights protection is available as soon as a work comes into existence.

Answer : 3)

Copyright law only protects the way ideas are expressed in a particular creation. It does not protect the underlying idea, method or system. Protection for such things may sometimes be obtained under patent law or trade secret law. For example, if your company writes a book which describes a new system for beer processing, the copyright in the book will allow you to prevent others from copying the text and illustrations of the book, but it will not give you any rights to prevent competitors from adopting your ideas for commercial purposes or from using the machinery, processes, and merchandising methods described in the book.

### Q2. Identify the incorrect statement:

- 1) Copyright protects works of authors, whereas related rights are granted to a few categories of people for their important role in communicating and disseminating some types of works to the public.
- 2) There are three kinds of related rights; rights of performers in their performances, rights of producers of sound recordings in their recordings, and rights of broadcasters in their broadcasts.

- 3) The right of the producer of a sound recording is separate from and additional to the copyright in the underlying composition. So, when reproducing a sound recording there may be several different rights to consider.
- 4) The copyright of the work created by an employee is automatically owned by the employer.

Answer: 4)

In most countries, if an employee creates copyright material within the scope of his/her employment, then the employer automatically owns the copyright, unless otherwise agreed. However, if an employee creates the material at a time and in a manner that is totally unconnected with his or her work as an employee, then he or she owns the copyright in it. Practical difficulties can arise, however, when work interests and hobbies overlap, creating a gray area.

**Q 3. Identify the incorrect statement:**

- 1) If a work was created in the course of a commission contract, the person who ordered the work will have a license to use the work for any purpose he/she wants.
- 2) To qualify for copyright protection, it must be original work which is developed independently irrespectively of artistic quality or value.
- 3) Copyright provides both economic rights and moral rights. The economic rights protect the author's economic interests and the moral rights protect the creator's creative integrity and reputation.
- 4) In most countries, protection of the economic rights lasts for the lifetime of the creator plus an additional period of at least fifty years.

Answer: 1)

In most countries, the creator owns the copyright in the commissioned work, and the person who ordered the work will only have a license to use the work for the purposes for which it was commissioned. If the person who commissioned the work to re-use the work for other purposes, he/she must obtain permission to use the copyright material in this new way.